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NATIONAL CITY PLANNING CONFERENCE

VOL. XIII, No. 1 JANUARY, 1924 TOTAL No. 91

CONTENTS

GRIFFENHAGEN & ASSOCIATES, LTD.

An organization of engineers, accountants, and specialists in the administrative and financial problems of public bodies with over ten years of practical experience in efficiency and economy work.

HEADQUARTERS OFFICES AT 155 EAST SUPERIOR ST., CHICAGO

THE LEAGUE'S BUSINESS

The Washington Meeting.—Full accounts of the conventions of the organizations which met with us in Washington, November 15–17, are carried in this issue. The story of our own meeting is missing because the secretary to whom the task of writing it up was assigned has been in hospital. It is nothing serious and he will give you a belated report next month.

*

Another Publication Translated.—The Tokyo Institute for Municipal Research, which survived the earthquake, has published the Japanese version of "Modern City Planning; Its Meaning and Methods" by Thomas Adams. Our readers will remember that this was published in connection with the June, 1922, issue. This is the second League publication which has been translated into the Japanese, the other being our supplement on Special Assessments first published in February, 1922.

*

Foreign Inquiries.—The month's mail has brought two requests from abroad for quantities of our literature. One is from the London County Council for copies of our Zoning pamphlet, and the other was from the Dublin Citizen's Association for material on city manager government. Both subjects are beginning to arouse considerable discussion in the British Isles.

*

Luncheon in Honor of Our New President.—On December 19 the officers and council of the League held a luncheon at the Whitehall Club, New York, to inaugurate the Honorable Frank L. Polk as president. Officers of other national civic organizations were present. It is the universal feeling that the League is fortunate in its new president.

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NATIONAL MUNICIPAL REVIEW

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FEDERAL BUDGET BECOMES NEWS

BY LUTHER GULICK

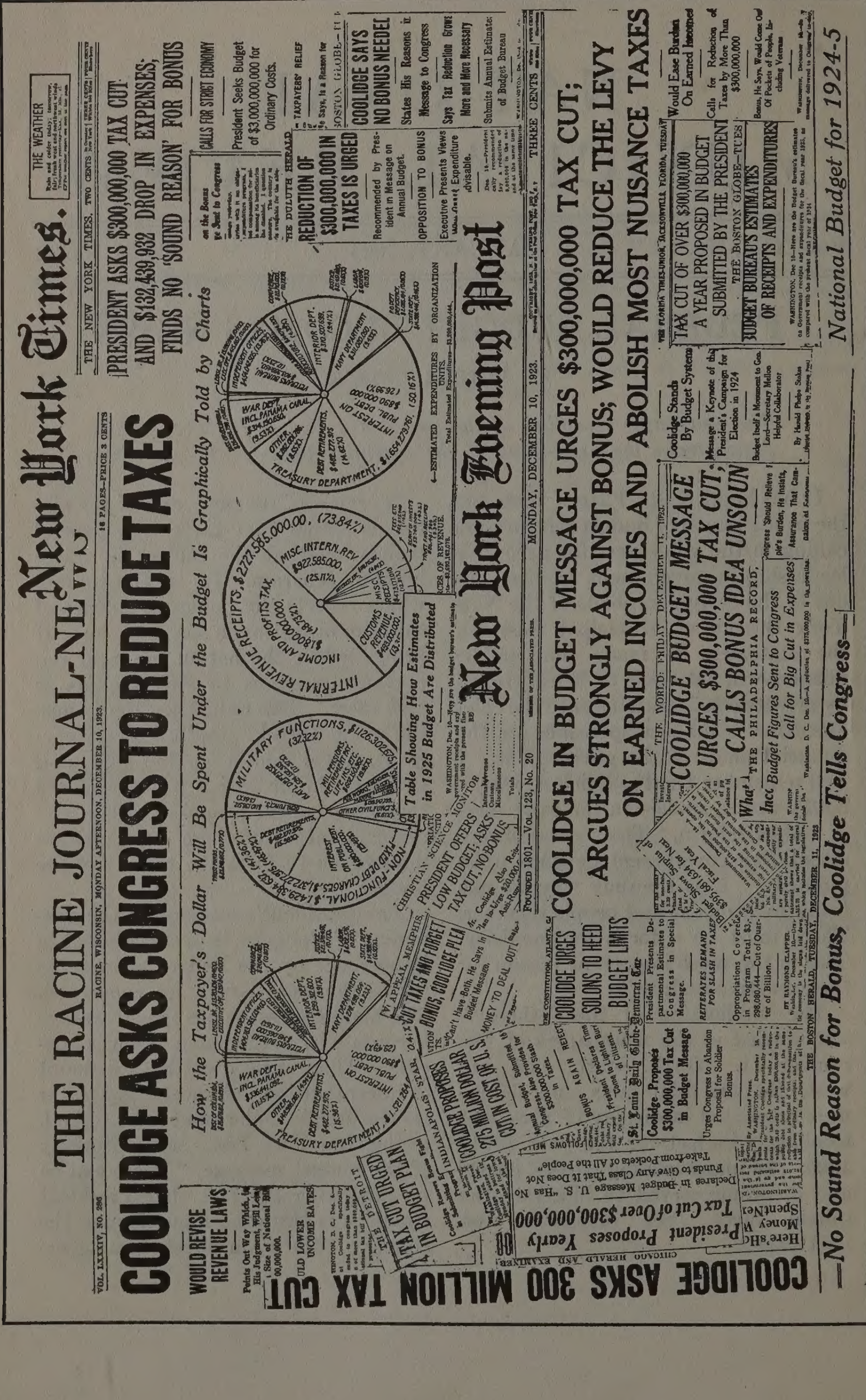
The newspaper reception of the president's budget for 1924–1925 demonstrates the news-value of the executive budget. :: ::

IT has happened! Fifteen years ago the frontiersmen of budget reform were calling in the wilderness for executive leadership in government finance. In one of the early pamphlets of the New York Bureau of Municipal Research the statement is made that public finances will not cease to be controlled by private considerations until the chief executive is made responsible for the financial plans of the government. I well remember Dr. Frederick A. Cleveland's words, spoken in the early days of budget reform, "The success of representative government depends upon publicity. It is the only way we can bring government and people together. There must be a focus for publicity. This is the most important reason for the executive budget."

The vindication of this "theory" was carried in the newspapers of December 11. North, south, east and west, the essential facts and figures were presented in display of President Coolidge's budget for the year 1924–1925. In many leading papers, charts and diagrams served to illustrate the salient facts. (See illustration on next page.)

A review of the news and of the editorials shows that there is a general realization that the budget is a live human program. It is the mirror which reflects the domestic policies of the administration in specific form. It brings before the nation the most important questions *in their relation to each other*. Tax reduction, the bonus, the pork barrel, prohibition enforcement, naval limitation, the debt, and general administration are considered together, and the proposals of the government on all of these questions are interwoven to form the texture of the budget.

The President's message on the convening of Congress is overshadowed in importance by the budget message as far as domestic issues are concerned. The budget message has the advantage because every recommendation is specific. There is no room left for doubt or interpretation. Almost every factor is measured in dollars and cents. And, as the New York *Times* said editorially of the budget message, "There can be no mistaking the fact that President Coolidge is throwing himself upon the country. He is, in effect, issuing or-



BUDGET HEADLINES

ders of battle and clearing the decks for action. We know now what he is going most urgently to ask of Congress. He has removed all doubt of the issues which he intends to make first and foremost in the Presidential election of 1924."

It has happened! The presentation of the financial program by the chief executive has created news-value and democracy-value. On this point the budget reformers are vindicated. Is it possible that they are right when they urge that changes be made in the appropriation procedure of Congress and that the executive and his representatives be called before Congress and given the right to explain and debate the budget?

THE CITY MANAGERS' CONVENTION

BY JOHN G. STUTZ
Executive Secretary, City Managers' Association

THE Tenth Annual Convention of The City Managers' Association, which was held in Washington, D. C., November 13, 14, 15, was in many respects the most successful which the Association has ever had. In point of attendance, it was certainly the largest and those who have attended conventions since the organization of the Association agree that the papers and discussions offered were as good as any that have gone before.

Following the address of welcome by Cuno H. Rudolph, president of the board of commissioners of the District of Columbia, and the response by Louis Brownlow, the secretary reported upon the growth of the manager plan during the past year.

GROWTH OF THE CITY-MANAGER PLAN

The fifteenth year of the city-manager plan of city government has been one of steady growth. There have been fifty-one cities added during the past twelve months. Only four cities have abandoned the commission-manager government by vote of the people during the fifteen years it has been in use. They are Hot Springs, Arkansas; Lawton, Oklahoma; Waltham, Massachusetts, and Akron, Ohio. The last two voted to abandon the plan during the past twelve months.

Between 90 per cent and 95 per cent of all the changes in city government at the present time are for the city-manager plan. There are 1,467 cities in the United States with a population of 5,000 or more. Of this number, 303, or 20 per cent, have adopted the commission plan of city government by vote of the citizens of the city. Fifty-three of the 303, or 17.5 per cent, are known to have abandoned the commission plan. There are 155 cities, or 10.5 per cent of all cities over 5,000 population, which have adopted the city-manager plan of city government by vote of the people. Of this number, four have abandoned the plan, or 2.5 per cent. It is conspicuous to note that while the commission plan has been in vogue since 1901, practically all the cities which adopted the commission plan did so prior to 1914 at which time there were twenty-one cities operating under the city-manager plan, which had begun to attract considerable attention. Seventeen and five-tenths per cent of the cities over 5,000 which had adopted the commission plan have abandoned it; fifteen of

of them have adopted the city-manager plan; 2.5 per cent of the cities over 5,000 which have adopted the city-manager plan have abandoned it, and in no case have these cities abandoned the city-manager plan for the commission plan.

There are now 234 cities operating or pledged to the city-manager plan of city government by vote of the people and ninety-four operating under the city-manager plan of government by the provisions of an ordinance. This represents an increase of thirty-one operating under or pledged to this plan by vote of the people, and twenty operating under the plan by provisions of an ordinance during the past twelve months.

REPUTATION OF CITY-MANAGER PLAN IS CAUSE FOR ITS GROWTH

The plan is growing by virtue of its reputation and not because of any propaganda movements. This is evidenced by the fact that it is growing best where it is best known. That is, it is spreading faster in states in which the most cities are already operating under it. Of the thirty-five states of the United States and the seven provinces of Great Britain having manager cities, ten states have two-thirds of these cities, as shown in the table in the next column of this page.

FEATURES OF THE CONVENTION

The addresses and discussions went off as per program. On Wednesday the managers called at the White House and were received by President Coolidge. Following the reception, the members were driven to Alexandria, Virginia, where an old-fashioned Virginia dinner, presided over by W. M. Rich, city manager of Alexandria, was served them.

	A Year Ago	At Present
Michigan	(34)	36
California	(23)	33
Texas	(23)	27
Virginia	(21)	23
Florida	(17)	23
Oklahoma	(23)	20
Ohio	(15)	15
North Carolina	(12)	13
Iowa	(11)	13
Kansas	(12)	12
Total		215
Total gain		51
Gain in 10 states		27

Other high spots were the banquet session on Wednesday evening, at which O. E. Carr acted as toastmaster and addresses were made by Mrs. Van Winkle, head of the Washington policewomen, and Richard S. Childs, vice-president of the National Municipal League; and the joint dinner session with the National Municipal League on Thursday, which was addressed by Mrs. Maud Wood Park, and by A. R. Hatton and Erie C. Hopwood on the Cleveland P. R. election.

THE WASHINGTON MEETING OF THE GOVERNMENTAL RESEARCH ASSOCIATION

BY ARCH MANDEL
Secretary of the Association

THE thirteenth meeting of the Governmental Research Conference, held in Washington November 14–17, contributed to the progress of the governmental research movement and to research itself.

To further the movement, definite action was taken to establish a central information bureau or clearing house for the governmental research field. The proposal adopted was to organize a clearing house for information under the combined auspices of the National Municipal League and of the Governmental Research Association, to be controlled by a joint committee of the two organizations. The executive committee of the association was authorized to proceed with plans for raising $25,000 a year for five years with which to employ an adequate staff and to carry on the work of this central bureau.

Dr. Dodds, secretary of the National Municipal League, put forth the proposal stating that a central clearing house was needed for two purposes: first, to disseminate information to bureaus and to people generally throughout the country; secondly, to do constructive research work. By the latter he meant the encouraging of cities to undertake experiments in methods of operation and in forms of organization and in the promotion of the adoption by cities of successful experiments. Information of various kinds was continually being called for by citizens and municipalities, but at the present time such information cannot be furnished conveniently or satisfactorily because none has been collected for dissemination. Dr. Dodds specified particularly the request for municipal ordinances and the need for a municipal year book.

C. P. Herbert, of the St. Paul Bureau of Municipal Research, outlined his plan of a central organization, which called for an organization made up of research bureaus as constituent members who would contribute a stated amount annually for the support of a central bureau, for which amount a definite service would be rendered to the membership. This plan is not as inclusive as the one proposed by Dr. Dodds, and it was agreed to proceed with the broader program.

The budget committee of the Governmental Research Association made its report through C. P. Herbert, the chairman, and A. E. Buck. Mr. Herbert rehearsed briefly the progress of budget making in the United States during the past eight years. The report summarized the present status of budget procedure in the United States, pointing out that although governmental subdivisions, through adoption of budgets, eliminated deficits and waste and were enabled to plan their work better, and that while budgets had resulted in the saving of money, they were still unintelligible to the people and to legislators and could not be used as tests of government.

The next step, it was pointed out, was to make budgets more intelligible, with particular emphasis upon the

need for being able to measure the results of services performed for the money appropriated. Mr. Buck amplified this phase of budget making in his paper entitled "The Need for More Extensive Budget Making." In it he pointed out that while budgets inform us as to what units will be purchased with the money requested, no information was furnished to inform the appropriating body and the public what results had been secured for the money spent in past periods. He emphasized the need for working out tests for government, the beginning of which is the employment of a uniform terminology and a uniform definition of functions or activities by all cities of the country. It was agreed to continue the budget committee for the purpose of working along these lines.

The accounting committee presented a preliminary report through its chairman, R. J. Patterson of the Philadelphia Bureau. The committee on municipal accounting planned to prepare a statement setting forth the fundamental principles followed in municipal accounting systems, and as there was no standard or basis upon which to work, the committee would have to analyze the entire system and attempt to determine what principles ought to be adopted in order to formulate a correct, scientific and harmonious municipal accounting system. The initial task of the committee was to develop a standard terminology.

The report outlined the purposes to be served by municipal accounting systems as follows: to assist executives and members of the legislative body in administering their tasks, to better the cause of administration, to inform citizens with regard to the financial transactions of their municipality and for purposes of control. The need for both proprietary and fund accounts in any system to be applied to various states and cities was emphasized, and it was pointed out that successful budgetary procedure without an adequate accounting and reporting system was impossible. In the matter of reporting the need of a balance sheet or a statement of assets and liabilities was set forth, and an operating statement or statement of revenues, expenditures and capital outlay for both the proprietary and fund accounts. In conclusion, Mr. Patterson stated that the work of the committee was seriously handicapped by lack of a common language in accounting procedure.

At the business session of the Conference, a constitution was adopted, which provided among other things a change of the name of the organization to the Governmental Research Association of America, in which membership would be by individuals and not by organizations.

A dinner meeting, at which representatives of the various bureaus made brief statements of the most interesting assignments they had during the past year, revealed a variety of valuable work being done and emphasized the need for some method of keeping the bureaus informed of the work of the various organizations. This will probably be done through the central information bureau when it is organized.

At the first session of the meeting, W. F. Willoughby of the Institute for Government Research, as presiding officer, made an interesting statement of the problems of government research: national, state and municipal. It was his opinion that the major function of a governmental research agency is the collection and diffusion of knowledge regarding this particular field and that each agency should be a medium of information regarding its own government, as to how it is organized and what its methods of procedure are.

Such agency should also make suggestions for improvement in existing conditions.

Mr. Willoughby stated he would like to see forty-eight volumes published, one for each state, describing the existing government, how it is organized, its personnel system, its purchasing system or the handling of its problems of material, its financial system, its budgetary system, its system of taxation, its accounting system, etc.; that from such volumes comparative data could be obtained upon which to base questions for fundamental reform; and that through a strong league of agencies, agreement on a program might be possible whereby the bureaus themselves could prepare such volumes. He cited the book on accounting published by the Bureau of Municipal Research of Philadelphia as an example, although he stated this book contained criticisms and comments and went somewhat beyond what he had in mind.

Mr. Willoughby then took up the subject of the future of staff members and the possibility of making governmental research a profession in itself. He suggested that one way of meeting this problem was to have staff men do writing work that would find expression in printed volumes over their names, and stated that this was the policy of the Institute for Government Research. He further suggested increased cooperation with universities, particularly political science departments, and suggested that men of the staff might give short lecture courses on specific problems of government.

CONSTABLES AND J. P.'S IN IOWA

BY WARREN L. WALLACE
Iowa State Teachers College

An actual, not a theoretical, statement of what is happening to these ancient offices in a state where they might be expected to be most active.

THE following study of a limited phase of county and township government was made in connection with a course in local government given at the Iowa State Teachers College. It was restricted to an observation of the offices of constable and justice of the peace.

MANY TOWNSHIPS HAVE NO J. P.'S AT ALL

The state is divided into townships and the law provides for the election of two justices and two constables in each township. The number given is a maximum number and there is no compulsion as to the selection of these officers by the township. In the event of election to either of these offices no penalty is attached for neglecting to qualify in the case of re-election, but for failure to qualify after the first election a fine of five dollars can be collected.

The best available material in print for making a study of these offices is the report of the county auditor. Reports from fifty-three counties out of a total of ninety-nine were secured which gave figures pertaining to the offices under consideration. Other reports received from auditors gave no data of use in making this study.

The fifty-three counties include a

total of eight hundred and fifty-nine townships. The law thus provides for a total of 1,718 justices in these counties. The reports of the auditors show, however, a total of 631. Four hundred and eight townships have no justices whatever.

The law provides that the clerk of the court, a county officer, shall keep a list of the justices of the county. From these officers reports were secured for nearly forty counties. These revealed that the report of the auditor gives a maximum number, showing in most cases the number elected rather than the number that qualify. In some of the counties there is a marked difference between the number elected and the number that qualified. For instance, Buena Vista elected twenty-four, but only nine are now reported as serving; Clinton elected seventeen, but only three are serving; Humboldt elected thirteen, but has six serving. In some cases the clerk reported the same number in office as was elected. On the whole, it would appear that the total listed by the auditors would have to be reduced at least a third to get a fairly accurate estimate of the number now in office.

The reasons for the small number of justices are probably best given in the reports of the clerks of the court. The most common reason is found in the small compensation. This idea is expressed in various ways. One wrote: "Fees do not justify any person spending the time required unless he is relieved from active work or performs the duties in connection with some active business in which he is engaged." Another said, "Fees of the office are too low and they cannot afford to do the work of the office for the fees paid."

Among the other reasons given are the following: "Names are not put on the ballot and have to be written in." This implies that people do not want to be bothered with the duties and, not having sought the office, refuse to be annoyed by the duties of the place. Another, "There is no inducement for a capable individual to desire the office and there are localities where no one does care for the office."

OFFICE MORE OFTEN FILLED IN THE TOWNS

The question was raised as to whether religion or party control had anything to do with the presence or the absence of the justice. It was found that religion, party in control or wealth of the county had apparently nothing to do with the office. An investigation was made of the townships in twenty-five counties to ascertain whether the officer is found more frequently in those where there are cities or incorporated towns. The latter in Iowa have a population of less than two thousand people. The study in these counties showed a marked tendency for the office to be filled in such places.

One clerk of the court in speaking of the condition in his county said, "It is very unusual for any justice of the peace to act outside of the ones elected in cities and towns. At the present time not a single justice is acting in the country districts."

CONSTABLES ALSO A. W. O. L.

Regarding the constable, figures were also compiled. In the auditors' reports from the fifty-three counties already referred to, it was found that only 523 were reported out of a possible total of 1,718, nearly a hundred less than the number of justices. Four hundred and eighty-eight townships, considerably more than 50 per cent, were reported as having no constable. Again it was found that the greater number of these officers are found in

the townships having either incorporated towns or cities.

An effort was made to secure some information from private individuals, but the chief contribution gathered from this source was that the ordinary person either believes that the office is filled or admits that he knows little about it.

An effort was made to get a rather general reaction from the sheriffs of the several counties as to their impression of the condition existing in the office of constable. Any report from them would display the sheriff's point of view naturally. Letters were received from a few more than 25 per cent of the sheriffs of the state, but their letters agreed on so many points that it is safe to presume that replies from others would have done no more than to confirm what had already been given.

The common reason given for vacancies in the office of constable is the same as that given in the case of the justices. Briefly, the sheriffs' statements are of the following order: "Not on salary;" "Don't get any salary, therefore there isn't anyone that wants the office."

The most complete statement of reasons was as follows: "They must give bond; there is no pay except when they do something and the fee is so small it does not pay to worry over it. They are too closely related in work and friendship or business." Other sheriffs wrote that no one wants the office and an attempt is made to thrust it upon them. They do not run for the place. One referred to the improved means of communication. He stated that in the days of the horse and buggy the constable was used a great deal, but since the roads have been improved and the automobile has become so common there is a constant tendency to use the sheriff more.

The general feeling is that the man who fills the place is one whose interest in the maintenance of the peace is not very keen and in some cases he is looked upon as one of such a limited information as to what should be done with legal papers that it is practically useless to entrust them to him.

THE CONSTABLE NOT EFFICIENT

There are two lines of work which legally fall to the constable to perform, viz., civil and criminal. Of his activity in each of these lines the sheriffs make some comment. In the criminal field there appears to be practically no activity on the part of the constable unless some direction to act has come from the justice of the peace or from the sheriff. Generally speaking, the sheriffs feel that the constable is of little value. Thus one sheriff says, "They give very little assistance in attending to the criminal matters connected with the office." And another, "As a rule the constables don't amount to anything as law enforcers."

While the sentiment expressed above is that of most of the sheriffs, it is not that of all of them. About 25 per cent of the replies find that the constables who have qualified are interested in their work and are of real assistance to the sheriff. One comments as follows, "What few we have are anxious and do co-operate with us." There is a more general agreement, however, as to their merit in the towns.

Little mention is made regarding the work of a civil nature. It is to be assumed, therefore, that there is very little connection between the sheriff's office and that of the constable in this respect. Certainly the connection is slight.

The conditions described above indicate that the offices of justice of the peace and the constable are falling into

disuse in Iowa and that the duties of these officers are being abandoned or are being transferred to others. That they are being abandoned is unlikely in the present day. That they are being transferred is borne out by the testimony of more than a few officers. The law opens the way for the disposal of justice's cases in adjoining townships in the absence of that officer in the township. The frequency with which this officer appears in the townships which include towns and their absence in those without towns tends to show that the great body of small cases is thus transferred.

Regarding the criminal work of the constable, two or three observations may be made. One is that occasionally the constable is joining forces with the sheriff in an attempt to maintain the general peace; another is that he is in a few instances proceeding rather independently; and the third and by far the most common is the total abandonment of the field.

Most persons interviewed believe that the constable has a field of service in the civil line. If, however, the office of justice were to be reorganized, a subsequent readjustment would naturally ensue in the office of constable. But in the criminal work, the sheriffs were very much of one mind as to what could be done to improve the situation in Iowa. An experienced sheriff wrote, "There is no question but that the law could be better enforced if the sheriff were allowed more deputies and in my own opinion it would be just as well enforced with the present number of deputies, if there were no constables at all. . . ." Another, "It is my opinion that it would be more efficient and more profitable to the taxpayers of the community, if the constables were done away with and the sheriff given additional help and take care of the justice work from the sheriff's office."

Numerous opinions of a similar nature could be given. Most of them show clearly that the sheriffs are pleading for more deputies and fewer constables. It is of interest to observe that the opinions of these officers in Iowa are very similar to those expressed by corresponding officers in New York state, as given in the recent report of the Special Joint Committee on Taxation and Retrenchment.

"PROHIBITION INSIDE OUT"

BY WILLIAM DUDLEY FOULKE

Published by courtesy of "Good Government," the organ of the National Civil Service Reform League, New York City. :: ::

Commissioner Haynes of the prohibition enforcement bureau, who used so willingly the clause in the Volstead act making political plunder of the field service of his unit—who turned out with such alacrity the Democratic scoundrels he found in office and appointed on the recommendations of Republican congressmen and politicians an equal number of Republican scoundrels in their places—men who have made his service a by-word of corruption and inefficiency—this man now publishes what he would have us believe is a fair account of the conduct of the prohibition enforcement service. For a long time his policy had been one of concealment and of insisting that

all was going well. I heard Mr. Haynes in August, 1922, in a speech at a Quaker reunion in my own town of Richmond, declare that his employees were "as high-type a force as was found in the government service," and condemn as "wet" propaganda all disparagement of their work.

On November 15, 1922, in testifying before the house committee on appropriations, he said, "We feel much gratified at the present functioning of our machinery." Even as late as last June, Mr. Haynes declared in his report that his force was acting *at a maximum efficiency* under a limited appropriation! Instead of warning the friends of law and order to be on their guard, the effect of this was to lull them into false security. The unwarranted claims of satisfactory enforcement aided the violators of the law to get beyond control. The passing back and forth of the rum-running fleets which once moved under cover, tells the story.

On October 4, 1922, the Commissioner issued an official statement that the office of the prohibition officer in New York state was in excellent condition though that office was then being investigated by a federal grand jury which reported on October 27 that it had been conducted in a disgraceful manner, and six of the enforcement officers and twenty-seven of their dependents were indicted for conspiracy for violating the Volstead act. The grand jury say in their report:

> Apparently the agents selected for active work of suppressing illegal traffic in whiskey have been chosen principally for political reasons, when it was necessary to select men for this work who are worthy of confidence and of such stable character that they would not yield to the temptations to which it was well understood they would be subjected.
>
> These appointees, being exempt from the civil service laws, were appointed and removed without the restrictions which those laws impose, and consequently the office seems to have been made the dumping ground for influential politicians who secured appointments for their henchmen without proper regard for the qualifications of those chosen.

A little later, District Attorney Hayward, quoted in the *New York Tribune* of December 30, 1922, said that the first knowledge in his office of a great conspiracy came a few weeks previously from a volunteer witness, though the office of the New York prohibition director had most of the facts as early as June and did not see fit to turn them over for prosecution. A chronology of the notorious violation of the laws disclosed by the newspapers presents an appalling array of crimes.

The Commissioner has at last awakened from so much of his pipe dream as led him to tell us, and perhaps to believe himself, that all was going well. Concealment was no longer possible and it became necessary to confess that violations of the law were widespread and dangerous. But still he insists that this is the fault of others—of lax enforcement by state and local officials and of general wickedness. That his own force of corrupt spoilsmen was at the bottom of the lawlessness—this he is still unwilling to confess.

In his twenty-first installment of "Prohibition Inside Out," published in the *Times*, he thus refers to the derelictions in his own service:

> Within the enforcement organization we count the cost of the names of our men, dishonest, weak men and *few in number*. . . . In mercy to the weak I refrain from turning the page which would reveal the names of those who are fallen by the wayside. . . . As the result of temptation in scores of forms and unceasingly offered, forty-three officers of the prohibition unit have been adjudged guilty by the courts since the beginning of the administration. *Even so, the force was 99 per cent honest.*

A more outrageously disingenuous and misleading statement it would be hard to conceive. Because only one per cent had been *actually convicted*, therefore 99 per cent were honest! Does Mr. Haynes know the percentage of convictions in other crimes? The report of the committee of the Bar Association at Minneapolis tells us that last year in New York two hundred and sixty murders were committed and three convictions were obtained! This was 1.15 per cent of the murders actually committed, yet here was a crime where the moral force of the community would be in favor of conviction. In respect to the liquor law public opinion is often adverse and the proportion of violations which escape punishment must be very much larger. It is safe to say that the crimes committed by prohibition agents exceed by many times the number of these agents, a single man often committing scores of them. In his very next article Mr. Haynes says the number of corrupt *state* officers is large and "those who have been caught are doubtless but a fraction of those who are guilty," yet he would have us believe that he has caught and punished all the guilty in his own service and that 99 per cent of his own subordinates are enforcing the law! We know from what we see daily around us, that immense quantities of liquor are illegally sold every day with the connivance of prohibition officials. And yet Mr. Haynes says, "Of real corruption the per cent stands at about one half of one per cent." Mr. Haynes, if you believe this, you are deceiving yourself and the rest of us can no longer credit what you say. You tell us of the forty-three convictions. But you say nothing of the "almost numberless cases" mentioned by President Harding in which "immediate dismissal" was necessary. Why are you silent on the Rhode Island service which had to be reorganized from top to bottom? Why do you tell us nothing of the service in New York where one director after another, with his chief subordinates, left the service with the marks of infamy upon his brow? Why nothing of Pennsylvania, where subordinates were actually dismissed by those higher up because they tried to enforce the law? Why nothing of Montana, Wisconsin and elsewhere where your chief officers were faithless to their trust? I appeal from your misleading statistics to the common consciousness of the country that a great proportion of your service is rotten to the core.

Of course you have some good men in it, men who have resisted enormous temptations, among them your roll of martyrs, as you call them, thirty cases you say, who have been slain in the prohibition service. The memory of these men deserves all honor at the hands of their countrymen, though it is a little hard to understand how such a case as that of John T. Foley, killed by the accidental discharge of his own gun, can be regarded as an instance of voluntary martyrdom.

These things continue and grow down to the present time. On July 1, 1923, Commissioner Haynes dismissed, in New York, eighteen prohibition agents because they were "non-producers." But the new appointments to fill their places were filled by the same political methods which created this non-production. On the same day dispatches from Chicago brought word that Roscoe C. Anderson, prohibition director, and John E. Easley, his chief agent, and nine others had been indicted for distributing among stockholders $200,000 worth of liquor stocks, and the Chicago district attorney then announced that charges of perjury against half a dozen agents

would be brought before the next federal grand jury.

Leon Ackerman and George Arnold Fugitt, agents attached to the District of Columbia force, were held under a bribery charge. Ackerman recently declared he had been the victim of a "frame-up" by other prohibition agents. We need not decide the equities between these worthy gentlemen. One way or the other the guilt lay with members of this disreputable body.

In Mr. Haynes' "Prohibition Inside Out" we have many edifying cases of temptation resisted, of bootleggers skillfully entrapped, of attempted bribery foiled by the efforts of the faithful. As the parties are not named, the stories cannot be verified or disproved, and we do not hear of the cases where the bootleggers *succeeded* and the bribery *prevailed*. He talks, for instance, of the *pretence* of influences in district attorney's offices and elsewhere, protecting violations of the law, not of the *real* influences which for a long time actually prevailed. His articles reminded me of a story by Charles O'Conor, the eminent lawyer, once engaged in the prosecution of Tweed and his fellow conspirators. A member of the New York ring once said to him, "They are very disagreeable, these damned lies that the newspapers publish." "Yes, they must be very disagreeable," said Mr. O'Conor, "these damned lies that the newspapers publish, but I would not think that would be what *you* would find most disagreeable. I should think it would be the damned *truths* the newspapers publish which you would find objectionable, sir." So it is not the *pretended* influences of which Mr. Haynes had the best right to complain, but the real influences which have prevailed.

But in spite of his desire to make them as small as possible, Mr. Haynes' account itself shows the enormous number of law violations. Take, for instance, the importations from the Bahamas. He says that in 1918 there was only wine of the value of 8,675 pounds sterling and spirits of 6,370 pounds, but last year the wine was over 27,000 pounds and spirits over 100,000 pounds. The traffic from St. Pierre, he says, has been enormous, the natives becoming rich out of these profits. He tells of the traps and vaults for storing liquor, covered with soil, whence it is conveyed at night by trucks for shipment in cars loaded with vegetables and destined to be lost in transit. He tells us of farmers who have not raised a hundred dollars' worth of produce in years who now have fine touring cars; he tells of wild parties of rum runners in which women participate. He tells us of a *possible minimum* of one million and a half gallons of importations for 1922; of the twenty-nine vessels which were seized and forty motor boats. He describes the wholesale smuggling at Detroit; the wholesale importations from Montreal across the New York border; he declares that Canada received many millions in taxes from these importations. He describes the highjackers who rob and murder the bootleggers—the piracy which he says is rampant from the Caribbeans to Newfoundland as well as in the Great Lakes and Puget Sound and Mexico. He talks much of protection of bootleggers by officials, but he gives his illustrations from the officials of different *states* and *cities* and *not from his own subordinates*. He seeks to divert us from a contemplation of present infamy by golden promises of future performance. Conditions may be bad today, but he endeavors to inspire faith by predicting the most satisfactory enforcement of prohibition in times to come. But was it not St. Paul himself who once defined faith as the "substance of things hoped for, the evidence

of things *not seen*"? Was it not Alexander Pope who said: "Man never *is* but always *to be* blest"?

Unfortunately we have no better means to gauge the future than by the past. The prohibition bureau has already been in operation over three years and a half. Have violations of the law increased or diminished during that time? Mr. Haynes tells us in his articles that the general decrease in arrests, prosecutions and convictions for crime, in general, and especially for drunkenness is evidence that the Volstead Act has benefited the world. The decrease in prosecutions, he says, shows a great gain.

What, then, shall be said of the report of the Attorney General to the President, in regard to the *enforcement of the Volstead Act itself*, which tells us that during the forty-one months' period since that act was passed, each year has brought an *increase* in prosecutions and convictions; that there have been at least 10,000 more convictions this year than last and 15,000 more than the year before? These figures, he says, not only show the rapid increase of prohibition cases but also indicate a stricter enforcement of the law. A more recent report of the Attorney General shows that the increase in convictions was even greater than that stated above.

Now if according to Mr. Haynes, *diminished* arrests and convictions show improvement as to *other* laws, does not an *increase* in convictions for violations of the Volstead Act show that conditions in regard to its enforcement are growing *worse?* The Attorney General tells us that the average of the last fiscal year is more than three times that of the first fiscal year. If these things mean merely increased vigilance in prosecutions, then what becomes of Mr. Haynes' argument that fewer arrests, prosecutions and convictions mean fewer crimes? Do they mean merely diminished vigilance? His argument cannot work both ways. The inevitable inference is *that violations of the enforcement act are increasing day by day and month by month and that the failure of the bureau to enforce the law under the spoils system is becoming each year more apparent.*

The only possible chance for any amelioration of present conditions in the prohibition enforcement bureau is to provide that *every place* under the commissioner, from the top to the bottom, shall be included in the classified service and that examinations shall be held, *not only for new appointments,* but in regard to the places which are held so largely by men who are now violating the law; that the men now holding these places be required to compete with other applicants, and that a thorough investigation be made by the civil service commission as to the character and integrity as well as the other qualifications of all who apply.

PENNSYLVANIA CLASSIFIES HER EMPLOYEES[1]

Pennsylvania has taken a bold step in the interest of the taxpayer. Those who know how politics can become entrenched behind a state pay roll understand how radical a movement employee classification can be. :: :: :: :: :: :: :: :: :: ::

I. THE NEED FOR AND RESULTS OF CLASSIFICATION

BY CLYDE L. KING
Secretary of the Commonwealth of Pennsylvania

No attempt had ever been made in Pennsylvania to secure equity in pay or in position among the employees of the different departments and other spending agencies of the state. The salaries of about one-fourth of the state employees previous to the Pinchot administration were fixed by statute. The salaries of the other three-fourths were fixed by department heads; and that usually without conference. And statutory salaries had never been adjusted to any common standard. Governor Pinchot asked for and secured the repeal of the statutory salaries with the duty upon the executive board[2] to standardize all salaries and positions other than those in the three elective departments.

INEQUALITIES SHOWING NEED FOR CLASSIFICATION

A few examples will show the need for classification. One employee recently complained to his department chief because his salary of not quite $2,400 per year had not been increased. "But," said the department chief, "you have been working here for some time at that salary." "I know," replied the employee, "but I never used to work much over six weeks in the year." This position required no special training and little experience. In another department an expert chemist with a special training of six years and a long specialized experience was working steadily with over-hours at a salary of $2,400 per year. One lawyer was doing a specialized work without other source of income at $1,800 per year, while work not so difficult was being done by a lawyer in another department at twice that salary.

One bureau had adopted the principle of equal pay but forgot to inquire as to the kind of work done for the pay. In this bureau the clerk, the messenger, the file clerk, the typist and the stenographer all drew the same pay: $1,500 per year.

The worst inequities were in statutory salaries. Dignified titles were used as a smoke screen to legislative inquiries. Thus a "building superintendent" has become under job analysis a mere "clerk class B" and one

[1] The papers by Dr. King and Mr. Lansburgh were delivered before the Forty-second Annual Meeting of the Pennsylvania Civil Service Association and are published by the courtesy of the Association.

[2] The executive board consists of the governor, the secretary of the commonweal th, the attorney general, the secretary of highwa ys and the secretary of forests and waters.

"chief clerk" is now a "clerk typist," and one whose statutory salary was based on the title of "auditor" is now a "clerk typist" and one former statutory "statistician" is now a "compiling clerk" and another who told the legislative world he was a "statistician" is now a "tabulating machine operator" and one whose statutory salary title was "investigator" is now a "clerk class A." None of the people with these high-sounding titles did the work those titles called for. The titles were devised to get the money. Thus many clerk typists were put on the statutory rolls under the high-sounding title of "recording clerk" and no legislator successfully got back of the window dressing to look at the goods that were being delivered for the pay.

To cite another illustration, the statutes gave one employee the title of "adjuster." A job analysis disclosed the fact that this individual had never "adjusted" anything, and had never acknowledged a letter nor written a report.

About two hundred girl typists were working in one bureau at $65 per month, while many males were doing poorly in other bureaus work not so difficult at $125 per month. From these two hundred girl typists the salaries of eighty have already been increased to $75 per month and the others are being given a chance to show that they can be worth $75 per month. Hereafter typists will be selected and none put on at less than $75 per month with a chance for an increase if their work is worthy of an increase. And the mere typing males will either have to secure other work that justifies higher pay, in or out of state employ, or accept the salary of a typist. These male typists, I should say, were usually in public office in the interest solely of some local political leader.

The annual rates for stenographers of equal skill and work varied in different departments in the same building as follows: $1,200, $1,320, $1,400, $1,500, and $2,000.

This type of iniquitous inequity has been done away with by classification.

Under classification of salaries on the pay rolls of October 1 to 15, 3,617 state employees with headquarters at Harrisburg were affected. The salaries of 1,024 of these were changed. Of these 252 were decreased an average of seventeen dollars per month and 772 were increased an average of sixteen dollars per month. The net increase per year was $96,500. This increase is offset by a few resignations and by many previous dismissals so that the total pay rolls have been reduced by one-eighth. To put it another way, under reorganization seven employees are doing better the work formerly done by eight.

SALARY CHANGES

Of the 1,024 changes on this first pay roll but 134 were decreased whose salaries were under $1,500 per year. Out of the 772 employees whose salaries were increased there were 553 whose salaries were $1,500 or below and 196 in the group with salaries ranging from $1,500 to $3,000 per year.

More changes have since been made and others are to be made. Some who had decreases will find better pay at more responsible or more difficult work, and others will take their places on the lower rungs of the ladder.

These increases in salaries nominally due to classification have actually been due to—

1. Reorganization within the department that brings more work or greater responsibilities to those already in the service.

2. Adjustments in salaries that have

not been adjusted to meet price increases.

3. The establishment of minimum salaries, such as $900 per year for typists.

4. Readjustments to meet present market wages. Thus the wages of practically all the skilled trade workers were increased.

5. Many employees had held on to their jobs under the promises made in the previous administration that their salaries would be increased.

6. Equal pay for equal work.

The proof that the classification on the whole has not been unfair to employees is that there will be a total of less than ten unrequested resignations among 4,000 employees thus far affected, or less than one out of 400. The proof that classification has not been unfair to the taxpayer is that the monthly pay rolls are now about 12½ per cent below those of the previous biennium, with better service to the public.

The decrease of one-eighth in the total monthly pay rolls in the departments financed from the general fund is due mainly to dispensing with employees with no work to do. Reclassification will not increase the total pay rolls when readjustments are completed. Classification coupled with reorganization will make possible better public service with lower total pay rolls.

THE RESULTS OF CLASSIFICATION

What does an equitable classification accomplish?

1. In the first place, it makes morale possible. What would be the effect of the following actual examples on morale anywhere, even in a church choir. A man was put in a department as a typist at $1,800 per year. He had never run a typewriter before he got his job. The other typists were dissatisfied as they had to do most of the work of this one-finger typing artist at lower pay. Some local party "worker" was "recognized" and the taxpayer paid the bill.

The pay of another man was jumped $600 per year in the appropriation bill by the simple device of increasing the salary carried by a designated job in the statutory rolls. And this increase was made without the knowledge of the head of the department concerned and at the request of the head of another department in the same administration because this employee was "useful" in local politics. Under such practice no zeal for public service was possible. Equal pay for equal work brings better work and happier workers.

2. Fair promotion is possible because there is a comparable basis for selection.

3. A proper selection of employees is possible as every job has been analyzed.

4. The taxpayer gets better service at lower costs.

5. Checks on public expenditures are better than on statutory rolls. When pay rolls become large, statutory rolls have everywhere proved useless as means of fiscal control. Under standardization every employee becomes a fiscal inspector. He has a right to equal treatment. And those in charge soon learn of their errors or their favoritism.

In Pennsylvania state government re-organization, including standardization, is already paying dividends to taxpayers of around 20 per cent. Of this 20 per cent, 12½ per cent is due to reductions in payrolls alone.

Three principles guided the classification. The first was equal pay for equal work. The second was recognition for competency and length of service. The third was the opportunity of individuals to get a chance at

a higher grade of work to the extent they are capable so to do, and so far as that was practicable. To this end Governor Pinchot has asked that promotions be made, so far as practicable, from within the service. This in time will make it possible for every employee to get work commensurate with his capacities so far as the state service can offer such opportunities.

This kind of classification cannot be put in practice at once. It will take several weeks before the work can be finally completed.

The results of this standardization have already been apparent in that employees are asking to do more work than they did heretofore and there is a zeal for competency in work that was formerly unknown in most all of the departments. Morale for years had been undermined by giving soft snaps to political favorites, either leaving their actual work undone or placing it upon others who were paid less for doing the same class of work.

Better service is now given to the people of this state for three dollars out of four of former expenditures. Governor Pinchot on taking office was faced with a deficit of $29,000,000. He cut the appropriations to the appointive departments by that sum, that is, by one-fourth. Through reorganization, fiscal and administrative, the taxpayers will be saved this sum and the state service has at the same time been improved.

II. METHODS USED IN CLASSIFYING SALARIED POSITIONS IN PENNSYLVANIA

BY RICHARD LANSBURGH
University of Pennsylvania

In the development of this classification there were four fundamental considerations kept constantly in mind:

1. The classification must necessarily be of positions, not persons.
2. The classification must be simple.
3. Positions involving work of equal responsibility requiring equal training must be classified similarly, regardless of the portion of the state service in which they were located. (This necessitated absolutely correct information on work done and training required.)
4. Salary gradations within classes were necessary to insure the possibility of differentiating between individuals on the basis of personal ability, experience, or length of service.

The first step in the development of the classification was the procurement of accurate information concerning all existing positions. This was secured through conference with executives in the state organization, each of whom gave complete information concerning positions under his immediate direction. A chief executive was asked concerning his sub-executives and the sub-executives regarding their subordinates. The information secured covered the work of each position, in detail, and the minimum qualifications necessary for an individual to carry on the work of the position, in terms of education and experience. After securing this information, it was typed on permanent card records and sent direct to the individual state employee for his signature as to correctness, or for correction and signature, as might be deemed proper by him. This was a certain check against injustice by the superior. Cases of discrepancies of importance between the

information given by the supervisor and by the employee were carefully checked to insure finally correct information. These cards then became a permanent record of all positions in the state service.

The development of classes which would be few and yet sufficiently definite and inclusive to cover all positions was begun next. Classes were devised to cover all work of similar type requiring equal minimum qualifications, and each was closely defined, as: clerk, classes A and B, computing clerk, accountant, class A, B and C, chief accounting clerk, supervisory clerk, class A, B and C. In order to insure uniformity between departments and persons in the various professions and vocations, all such positions were placed in a professional group of 6 classes, or a vocational group of 6 classes, the differentiation between classes being solely on the basis of education and experience needed to perform properly the work of the position. Thus, engineers, foresters and veterinarians were all classified in the professional group; and nurses, fish culturists, and inspectors in the vocational group. The particular class within the group in which a particular position fell was dependent upon the duties of the position.

The next step was the establishment of a salary range and a series of salary rates for each class developed.

The groundwork then having been completely laid, each position in the service was tentatively placed in its proper class. This tentative classification was next presented to each department head for his department, and to bureau heads, if desired by the department head. Proper adjustments were made at this point and many discrepancies eliminated. Final salary rates within the class were suggested by the department heads on the basis of the individual merits of the person holding the position.

Lists of all changes in salaries resulting from the classification were next prepared and given a final check by department heads, final adjustments being made where necessary at this time.

All changes possible under budgetary requirements were made effective immediately, and in all other cases, the proper classification was established and the individual paid as nearly as possible the amount finally determined upon.

PROGRESS IN STATE BUDGET MAKING

BY A. E. BUCK

National Institute of Public Administration

In an article printed about two years ago (National Municipal Review, November, 1921, pp. 568–573) the writer presented briefly the progress, as he saw it, which had been made up to that time in state budget making. While there has not been a great deal of strict budget legislation passed during the last two years, a considerable amount of general and financial legislation has been enacted by the different states, which is certain to promote progress in budget planning and control. Governors and legislative leaders are realizing that while it is important to have a good budget law, it cannot do everything. They are beginning to understand that

systematic organization, business methods, and competent administration are essential to the success of a budget system. This general attitude augurs well for the future progress of state budget systems. A very short time ago there was current the idea that only a budget law was necessary to bring order and a healthy balance to a state government which was financially on the edge of bankruptcy. But this idea is fast changing.

During the past two years Pennsylvania has been added to the list of states with legally authorized budget systems. Rhode Island has made a move in the direction of an executive budget. The Missouri law providing for a state budget procedure and a department of budget failed on referendum at the general election in 1922. As a result of new and amended budget legislation adopted up to this time, there are now twenty-eight states with the executive type of budget and eighteen states with the board type of budget. Of course, this grouping is made entirely upon the basis of the legal provisions. Executive leadership in the formulation of the budget depends more upon the type of governor and the political situation in the state than it does upon the legal provisions. So complex is our system of state government that not always can the governor, or the legislature, or a fiscal board be pointed to as the dominating agency in the determination of the budget. California's recent experience shows that the judiciary may sometimes be a determining factor in fixing the state budget.

I. Recent State Budget Legislation

Constitutional budget provisions

An interesting trend in state budget legislation is in the direction of giving permanency to the budget by providing for it in the constitution. There are now six states with more or less satisfactory budget provisions written in their constitutions. These are Maryland (1916), West Virginia (1918), Massachusetts (1918), Nebraska (1920), Louisiana (1921), and California (1922). Proposed budget amendments to the constitutions of Indiana, New Mexico and New York failed of adoption in 1921.

The Maryland, the West Virginia (largely copied from Maryland), and the Massachusetts budget amendments have been noted in previous articles and their principal provisions outlined. The Nebraska budget amendment (Art. V, sec. 7) requires the governor to submit a budget to the legislature at the beginning of each session. The legislature cannot appropriate in excess of the governor's recommendations, except by a three-fifths vote of each house, and the excess so voted is subject to the governor's veto. The governor has the assistance of the department of finance in preparing the budget according to the regulations established by law.

The Louisiana provisions (Art. X, sec. 2; Art. IV, secs. 9–11) constitute the state tax commission the budget-making authority. It defines the general appropriation bill and provides that all other appropriations must be made in separate bills. All contingent appropriations are abolished. The legislature is not permitted to pass an appropriation bill within five days of the end of the session. These constitutional provisions are supplemented by a budget statute.

The California budget amendment (Art. IV, sec. 34) requires the governor to submit a complete budget plan to the legislature within the first thirty days of the session. The governor submits along with the budget a budget

bill, which he can amend at any time during the legislative session. No appropriations, except for the expenses of the legislature and such emergency appropriations as the governor may recommend, can be passed before the budget bill is enacted. Other appropriations must be in separate bills, one for each definite purpose. In approving appropriation bills, the governor can by his veto reduce or eliminate items. The legislature can override the governor's veto by a two-thirds vote.

NEW BUDGET STATUTES

The Pennsylvania code of 1923, reorganizing the state administration, establishes the first legal budget procedure for the state government. It provides that the governor submit a budget to the legislature within four weeks after the beginning of the session. The secretary of state, appointed by the governor, is the chief budget officer. The legislature is not limited in its action upon the budget. The governor, however, has the item veto power. He exercises through the department of state and finance rather broad powers relating to the control of expenditures.

The Tennessee administrative reorganization act of 1923 provides that the governor must submit a complete budget to the legislature within four weeks after his inauguration. The budget information is gathered, compiled and submitted to the governor by the department of finance and taxation, the head of which is directly responsible to the governor. This department has complete control over the expenditure of all funds after the appropriations have been made by the legislature. The state administration has been arranged in eight orderly departments and provisions have been made for businesslike management. Those provisions of the budget law of 1917 in conflict with the reorganization act were repealed.

Under the reorganization act of Vermont passed in 1923, the governor is made responsible for the budget. The budget information is furnished by the department of finance and the incoming governor must send the budget with his recommendations to the legislature within three weeks after the beginning of the session. The appropriations are made in a general bill. Control over state finances is established through the department of finance. The reorganization plan is in the direction of systematizing the state's business. The budget law of 1917 is repealed.

CHANGES IN EXISTING BUDGET LEGISLATION

A financial code, which greatly strengthens the budget procedure, was enacted at a special session of the Arizona legislature in April, 1922. This code systematizes the financial methods so far as the existing organization of the state government will permit. It abolishes a lot of funds and all special and continuing appropriations.

In 1922 Georgia revised its budget law by reconstituting the budget commission, now called the state investigating and budget commission, so as to consist of the governor, comptroller, attorney general, and chairmen of the legislative finance committees.

The Massachusetts legislature of 1922 established a commission on administration and finance. The fiscal procedure was further outlined by a law passed in 1923 (ch. 362). The work of the commission is divided into a comptroller's bureau, a budget bureau, a purchasing bureau, and a division of personnel and standardization. The budget bureau is under a commis-

sioner appointed by the governor. It prepares the budget for the governor. All the bookkeeping is done in the comptroller's bureau, the elective auditor keeping no accounts in connection with his auditing work.

The Maryland reorganization act, effective January 1, 1923, did practically nothing toward establishing a permanent agency to assist the governor in the preparation of the budget for the legislature. The act did, however, establish a department of finance consisting of several agencies, some of which are not responsible to the governor.

The Rhode Island legislature of 1923 made a move in the direction of an executive budget by enacting a law requiring the governor to collect estimates and send a statement of income and expenditures to the legislature.

An amendment to the Virginia budget law in 1922 empowers the governor to appoint a director of the budget for a term of four years at a salary of $4,500, as well as special assistants.

Under the Washington administrative code of 1921 the department of efficiency is required to gather the estimates for the state finance committee, composed of the governor, treasurer, and auditor.

Minor changes were made in several other state budget laws by the 1923 sessions of the legislature. The Alabama budget law was amended so as to add a fourth member to the budget commission, the chief examiner of public accounts. Idaho again transferred the budget bureau, this time from the governor's office to the office of the state auditor. North Dakota made some slight changes in the budget law, principally with reference to the meetings of the budget board. Oklahoma moved backward four months the date of submitting the estimates to the governor. Utah amended its budget law to provide for a legislative procedure similar to that of Maryland without the provision restricting the legislature to striking out or reducing items in the governor's budget.

II. Working of State Budget Systems

Several interesting things have happened recently in connection with the operation of state budget systems. Some of these present certain difficulties that are being encountered. Others serve to demonstrate the value of systematic budget planning. Altogether they indicate an urgent need for a broader understanding and a more complete readjustment of state finances and administration. The budget alone cannot be expected to do everything. It has its limitations, depending upon local conditions, political situations, and administrative methods.

Budget legislation tested in the courts

One of the most important events that has taken place in connection with state budget making transpired recently in California, where the constitutional amendment and other budget legislation was tested in the state supreme court. Governor Richardson in his campaign for election stated that he would reduce the state budget by some ten million dollars. After his election he prepared a budget under the provisions of the constitutional amendment and submitted it to the legislature, which made approximately the proposed reduction. In making this reduction, however, he seems to have encroached upon the interests of some rather prominent members of the legislature. This brought on a fight in the legislature, which resulted in raising many of the items in the governor's budget. When the budget bill came to the governor for his

approval, he vetoed the increases, as he had authority to do under the constitution. The legislature failed to muster the two-thirds vote required to override his vetoes, so the bill became a law as it stood.

In making up the budget bill, Governor Richardson did not include the requirements of certain state agencies that were covered by previous special authorizations of the legislature, as in the case where fees were collected and retained in a special fund for the support of the collecting agency. These, the governor maintained in his veto message, had already been provided for and therefore should not be included. When the budget became effective, July 1, 1923, the state controller refused to draw his warrant for any expenditures not included in the budget bill on the ground that the budget amendment repealed, by implication, the provisions for appropriations from special funds established for the various agencies. Immediately some five or six suits were entered to compel the controller to make payment.

The first of these cases and perhaps the most important (*Railroad Commission of California* v. *Riley, State Controller*, 218 Pac. 415) was decided by the supreme court on September 14. The court held that the budget amendment and the budget bill did not repeal special funds or revenue appropriations made by previous laws, but that such funds remained intact and that such appropriations became part of the budget regardless of whether or not they were expressly set forth in it. But the court held further that the amount appropriated in the budget bill was the maximum amount that could be spent for such purpose and any special fund was to apply on this amount before the general fund could be drawn upon. The court, therefore, refused to sustain the complainant's contention that the amount in the special fund might be expended in addition to the amount appropriated in the budget bill.

Three or four similar cases were subsequently decided on the same grounds as the preceding case. However, one of these cases (*Western Shore Lumber Co.* v. *Riley, State Controller*, 218 Pac. 761) involved the right to expend from the unexpended balance of an appropriation made in 1917 for the enlargement of the California Redwood Park. The court held that specific appropriations previously made by the legislature were unaffected by the budget amendment and enactments pursuant thereto.

The final case in the series was decided by the court on October 24. The state superintendent of public instruction sought to set aside the governor's veto of a special provision in the budget bill fixing one per cent of the appropriations for personal services in the teachers' colleges to be expended for the general administration of his office. The governor vetoed this provision on the ground that the superintendent's office was fully provided for in the direct appropriations made in the budget bill. The court sustained the governor's position. It held that the provision was an attempt to defeat the purpose of the budget amendment by making an appropriation in such form as not to be subject to executive veto.

On the whole, it appears that Governor Richardson was sustained in his budget program by the supreme court. But these decisions have not cured the general weaknesses of the state's financial system. Although the governor may cut down the appropriations, it is going to be hard for him to induce economy in carrying out the budget unless he can direct the expenditures. With so many state officers and agen-

cies in a position where they can successfully oppose the governor's will, we may expect that they will let no opportunity pass to discredit the working of the budget system.

REDUCTIONS IN GOVERNMENTAL EXPENDITURES

Some striking reductions in governmental expenditures have recently been made through budget planning and better financial procedure. The Arizona financial code, noted above, enabled the legislature to repeal the biennial appropriations and enact a general appropriation bill for the second year of the biennium—July 1, 1922, to June 30, 1923—which greatly reduced the amount of the appropriations previously allowed. This not only brought about a reduction in the state tax rate, but the fiscal year closed with a balance of over a half of a million dollars out of a total budget of less than five millions, and besides the unprecedented condition in the state of no department having exceeded its appropriations.

In January, 1922, Governor McKelvie of Nebraska called a special session of the legislature to cut down the appropriations for the biennium then current. The legislature reduced the appropriations, according to this recommendation, by more than two million dollars, thus making it possible to reduce the state tax levy by one-third. This was the first time in the history of the state that such a thing had occurred, and it was also the first time that the state government had been run without deficiencies. This was made possible by the general financial system installed under the civil administrative code of 1919. Notwithstanding this marked progress, Governor Bryan for political reasons vigorously attacked the whole system in his messages to the 1923 legislature.

Other states have made reductions in the cost of their governments through better financial planning and management. Pennsylvania by reorganization and budget planning has greatly reduced the appropriations for the running expenses of the government during the next two years and proposes to give much better service than before. Tennessee through similar means has also made considerable reduction in the cost of the government.

Notable State Budgets and Fiscal Methods

Although several states have had budget legislation on their statute books for almost ten years, they have made very little progress in the direction of a real budget system, that is, one that makes for careful planning and establishes control over expenditures after the appropriations have been authorized. The reason for this is that a good budget procedure must be worked out; it cannot be suddenly legislated into existence. A little time and a certain amount of skill and energy unhampered by political considerations are necessary to the establishment of a successful budget system. Among the states that have made progress in their general fiscal methods during the past five years are Illinois, Massachusetts, Nebraska, Ohio and Washington. Pennsylvania and Tennessee are now in a position to make progress because of their recent reforms. These states have established special departments, having supervision and control over the financial operations of the government, to aid the governor in budget planning and in carrying out the budget. Other states worthy of note because of the effort that has been spent in systematizing the budget information and in getting out a more or less complete

budget document are Virginia, Maryland, South Carolina, Wyoming and New York.

One of the most striking developments in connection with the budget is the system of executive allotments now being applied in a few states, notably in Nebraska and Illinois. Appropriations are made to the spending agencies largely in lump sums. Before any appropriation becomes available for use, the spending agency must submit to the department of finance an allotment of the amount estimated to be required to carry on the work of the agency during each quarter of the year, and this allotment must receive the approval of the governor. The allotment may be revised quarterly with the governor's approval. This method has many good points. It forces the executive of a spending agency to have a definite work program, and to revise this program periodically according as new conditions may demand. It gives flexibility at all times to what might otherwise be rigid appropriations. It prevents overexpenditure at the end of the fiscal year if properly enforced by the department of finance. It discourages needless expenditure of funds. It enables the department of finance to determine just how much money the government is going to be called upon to expend during a given period—an important consideration from the point of view of the means-of-financing side of the budget.

A Broader Base for the Budget Plan

A most serious drawback to budget planning is the lack of proper information. Several states are trying to prepare budgets with practically no information, at least, no information in suitable form. They have no permanent staff agency or department whose business it is to get together the budget information. Their accounting system is poor, and the information that it records is unclassified. Certainly there is need in most states for a much broader base upon which to build the budget plan. A few states have made a start in this direction.

A notable piece of work has been done by the department of efficiency of Washington. This is a financial history of the state from the date of its admission into the Union (1889) up to last year. It traces throughout this period, revenues, appropriations, expenditures and reversions, together with certain special features. From it information may be had of every individual source of revenue, every function created or discontinued, every fund and its analysis, every expenditure for any purpose, and every reversion analyzed in an understandable manner. It is a valuable analysis in retrospect of the state's finances.

But a proper approach to the budget plan demands also that present conditions be analyzed and that large and important needs for the future be somewhat outlined. Virginia has attempted to analyze present conditions and to present the facts therefrom in the budget. It has studied the taxable wealth and resources within its borders and has given them a place in the budget. If more of this kind of work were done, perhaps fewer ill-advised fiscal measures would be passed by the state legislatures. There is also great need for planning over a period of years for such things as institutional plants and construction programs. Budget planning for such things should look beyond the immediate year or biennium to, at least, ten years ahead.

A great deal more might be said on this subject, but perhaps enough has been said to indicate that there is still a big task ahead if the budget is to mean what it should for state governments.

PARTY POLITICS IN ENGLISH LOCAL GOVERNMENT

I. THE ORGANIZATION AND FUNCTIONS OF LOCAL AUTHORITIES

BY JOHN J. CLARKE, M.A., F.S.S.

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We are publishing Professor Clarke's article in two installments. The present installment gives us the structure of local government; the next will tell how and to what extent political parties figure in municipal affairs. Many readers will want to file the two for reference. ::

To appreciate fully the development of party politics in English local government, it is desirable to understand clearly the constitutional position.

Local government in the older countries, and especially in England—which claims to possess the Mother of Parliaments—existed before the central administration appeared. In the newer countries the local administration is usually superimposed upon the country by the central executive. In England the opposite has applied. Our local institutions date back to the days of Alfred, but the central administration as we know it to-day dates from the twelfth century.

PRESENT FORMS COMPARATIVELY MODERN

The system of modern local government may be said to be principally the product of the latter part of the last century. For a time an effort was made to stimulate and to adapt to the new requirements the old forms of local government which had existed since the early development. This soon ceased except in county government, where the justices continued to be active long after many of the boards which were the product of the latter half of the eighteenth and the early years of the nineteenth centuries had ceased to function. There was a prolonged period of local initiative and experiment to meet the new problems of local government. In contrast to this tendency and, in the main, coming after it, there developed the national regulation of local authorities and of functions. With it there was a growing tendency, from the passing of the Local Government Acts 1888 and 1894, to consolidate and simplify local authorities and areas, rather than to the establishment of special authorities for particular duties. These two developments constituted the main feature in the latter part of the century. There was a steady change from nominated to elected authorities, and also a constant widening of the local government franchise, both as regards those who might elect and those who might be elected. An important incident of this change was the clear separation, for the first time in English local government, of administrative from judicial functions.

Among the functions of local authorities, under the stern pressure of

necessity, the Poor-Law first occupied most attention. The attention of the local authorities was next directed to matters relating to police and highways. Then, after the country had become thoroughly frightened by the epidemics of cholera, came sanitation, and much later, education followed on the further extension of the franchise. Corresponding with the growth of the national regulation of local government and facilitated by the contraction of distances through the triumph of the railway, there was a steady, though not unbroken, development of central control and supervision, accepted not without reluctance, as an unavoidable part of the new system of local government, in return for the ever-increasing grants-in-aid from the Imperial exchequer.

The powers regulating the acts of local authorities may be said to be:

(a) *Parliament,* which remains the supreme authority and from whom all the powers are derived.

(b) *The common law,* which is the unwritten or traditional law of the realm.

(c) *The constitutions of the local authorities.* These are contained in the principal acts of Parliament which give the method of election, powers and duties of these bodies.

(d) *The central departments of the state,* which aim at securing efficiency in local government and a certain uniformity of administration.

THE DIFFERENT UNITS OF LOCAL GOVERNMENT

The following is a summary of the different classes of local authorities as submitted by Mr. I. G. Gibbon, C.B.E., an assistant secretary of the ministry of health, in his evidence before the Royal Commission on Local Government on 13th April, 1923.

CLASSES OF LOCAL AUTHORITIES AND NUMBER IN EACH CLASS

Classes of local authorities	*Number of separate authorities having financial transactions during the year 1920–21*
County councils:	
London County Council	*1
Other county councils	*61
Joint committees of county councils	11
Council of the Isles of Scilly	*1
Corporation of the City of London	*1
Receiver for the Metropolitan police district	*1
Metropolitan borough councils	*28
Town councils:	
Councils of county boroughs	*82
Councils of other municipal boroughs	*247
Urban district councils, for districts other than boroughs	*791
Rural district councils (for 658 rural districts)	*648
Managers of the Metropolitan asylum district	*1
Boards of guardians:	
Poor law unions in the administrative county of London	*28
Other poor law unions	*614

[1] These are the numbers of local authorities on 1st April, 1922. The other numbers indicate those which had financial transactions during the year 1920–21, that being the latest year for which particulars are available. The total number of rural parishes in England and Wales is 12,850, of which (approximately) 7,200 have a parish council and 5,650 are without such a council.

Poor law joint committees (including managers of poor law school and sick asylum districts, other than the Metropolitan asylum district)	16
Parish councils	6,225
Parish meetings	353
Separate bodies of overseers of the poor (number of parishes outside London)	*14,373
Burial boards	142
Joint boards and other joint authorities for special purposes:	
Hospitals	218
Burial grounds	231
Fuel and lighting	73
Sewerage	45
Water undertakings	36
Education	33
Miscellaneous	103
	739
Visiting committees of lunatic asylums (number of asylums)	91
Local authorities carrying on harbor, dock, pier, canal and quay undertakings (excluding councils of boroughs and urban districts)	55
Commissioners of sewers, land drainage boards, and other drainage and embankment authorities and river conservancy authorities	326
Port sanitary authorities, being joint boards	29
Central (unemployed) body for London, and distress committees for boroughs and urban districts outside London	45
Conservators of commons and trustees of certain open spaces	14
Lighting inspectors, and committees for lighting appointed under s. 53 (2) of the L. G. Act, 1894	20
Commissioners of markets	3
Governing bodies of county school and scholarship districts in Wales and Monmouthshire	99
Boards of conservators under the salmon and freshwater fisheries acts, 1861–1892	45
Local (sea) fisheries committees (excluding the C. C.s and two boards of conservators acting as local fisheries committees)	9
Bridge and ferry trustees	4
Library commissioners (Bolton Percy)	1
Total	25,104

Of these local authorities the following are the more important and may be classified in the following main groups:

1. (a) The county council under the Local Government Act, 1888.
   (b) The county borough council.
2. In boroughs (other than county boroughs) the town council under the Municipal Corporation Act, 1882.
3. In county areas under the Local Government Act, 1894:
   (a) The urban district council.
   (b) Rural.
      (i) The rural district council.
      (ii) The parish council or meeting.
4. Poor law unions under boards of guardians created by the Poor Law Amendment Act, 1834.

POWERS OF LOCAL UNITS

A brief account of the constitution, powers and duties of these local authorities may serve to illustrate the relative importance of these bodies.[1]

(a) *County Councils.*—A council is elected for each "administrative county," which is the same as a geographical county, except that the largest towns (called "county boroughs") are not included, and some geographi-

[1] See *Local Government of the United Kingdom.* By the present author. Second Edition (Pitman).

cal counties are divided into two or more administrative counties.

The principal matters with which county councils are concerned are: Education (only elementary education in rural and the smaller urban areas); main roads; lunatics and mental deficients; small holdings; pollution of rivers; weights and measures; diseases of animals; sale of food and drugs; maternity and child welfare; tuberculosis; venereal diseases.

The county council exercises control in some respects over the minor local authorities. It has power to alter boundaries, to give increased power within certain limits, and, if necessary, to act in default.

(b) *County Boroughs*,—These are the largest towns, almost all being over 50,000 population. They have the same powers and duties as the county councils and also those of town and urban district councils, and are entirely independent of the county councils.

(c) *Municipal Boroughs and Urban Districts*.—These include all towns other than county boroughs. Municipal boroughs are the towns which have received a charter of incorporation and have a mayor.

The town (and urban district) councils are the local sanitary authorities, and are responsible for the good government of the towns in all respects including: Maintenance and cleansing of streets and roads; responsibility for administration of acts relating to the housing of the working classes; sewerage and sewage disposal; water supply; hospitals; baths and wash-houses; parks and cemeteries; abatement of nuisances; inspection of food; fire prevention; maternity and child welfare; public libraries and museums.

Boroughs over 10,000 population and urban districts over 20,000 are also responsible for elementary education.

The large towns can also obtain powers to run their tramways, to manufacture and supply gas or electricity, to own and manage markets and harbors, or to enter upon other undertakings of a similar nature for the benefit of the community.

(d) *Rural Districts*.—The whole of an administrative county outside the boroughs and urban districts is divided into rural districts.

Rural district councils are also sanitary authorities, but they have not so many powers as the urban districts, although urban powers can be specially given them. They are also the authorities for housing and for maintaining all roads other than main roads, but they have no education powers.

(e) *Parish Councils and Parish Meetings*.—Every rural district is divided into parishes. Every parish has a parish meeting, and each parish over 300 population has an elected parish council, and those between 100 and 300 have one if they wish.

The chief duties of parish councils are the appointment of overseers and assistant overseers, the provision of allotments and the care of footpaths. They can also provide parish rooms, public libraries, wash-houses, recreation grounds and village greens.

(f) *Board of Guardians*.—The area of each of these bodies usually coincides with that of a rural district, together with the urban districts geographically within them. Their business is the administration of the Poor Law, vaccination, assessment and registration of births, deaths and marriages.

(g) *Police Authorities*.—Many of the boroughs are themselves police authorities, and in these cases act through a "Watch Committee."

In the administrative counties, including those boroughs which are not their own police authority, the au-

thority is a "standing joint committee" of the county council and the county justices.

The police for London and the surrounding district are directly under the home office.

(h) *London.*—The London County Council has various powers not possessed by other county councils, of which perhaps the most important are those of housing the working classes and of clearing large slum areas and rebuilding on the site. It has not, however, any main roads under its care.

London is also divided into 28 metropolitan boroughs, which are the sanitary authorities, and have much the same powers as the provincial boroughs. The City of London retains its ancient and historical Common Council. There are also boards of guardians within the metropolis and other *ad hoc* authorities such as the Metropolitan Asylum Board and the Metropolitan Water Board.

FINANCE

Local authorities obtain the money they require to carry out their duties from four main sources:

(a) Rates.
(b) Government grants.
(c) Trading profits and payments for services, and
(d) Loans.

(a) *Rates.*—These are local taxes levied on land and buildings, which are the only things local authorities have power to tax. The "local taxation licenses" (*i.e.*, on carriages, guns, dogs, etc.) are really government taxes collected by the local authorities, a proportion being refunded to them as a grant. The larger authorities are not limited as to the amount they may raise by means of rates. Parish councils may not levy a rate of more than 3d. in the £ without the consent of the parish meeting, and even with the consent they may not levy a rate of more than 6d. in the £ *exclusive* of expenditure under certain "adoptive" acts.

(b) *Government Grants.*—In recognition of the fact that much of the work done by local authorities is national in character, large grants are made to them out of the National exchequer for different purposes. Thus, half the cost of the police and about half the cost of education are paid for in this way, and grants are also given for the treatment of tuberculosis and for many other services.

(c) *Trading Profits and Payments for Services.*—This source of income is practically confined to the larger towns, and, of course, varies considerably in amount. Some towns make a profit out of their markets, tramway services, their electric light and power stations, or some other commercial undertaking upon which they have embarked. Opinion is divided as to whether it is desirable for local authorities to make profits.

(d) *Loans.*—When a local authority requires money for some work of a permanent nature, such as the building of a school, the purchase of land for small holdings or the erection of working-class dwellings, they usually spread the cost over a number of years (from twenty to eighty according to the purpose) by borrowing the money and paying it back by installments with interest. The sanction of a government department is required before raising such a loan, and the money may be borrowed from a government office called the public works loan commissioners, or elsewhere. This is one of the most important powers of the control vested in the central government, as, of course, their consent may be withheld to a proposed loan on grounds not necessarily referring to that loan.

SUFFRAGE

The right to vote at local government elections rests upon the ownership or occupation of land, houses, or other property which is rated, and upon residence for six months. To have a vote a man must be 21 years of age, or 19 in the case of soldiers and sailors, and must be free from legal disqualification.

Caretakers, coachmen, gardeners, railway workers and others living in houses by virtue of their service or employment are entitled to the vote if their employer does not live in the house.

A lodger is only entitled to the vote where his rooms are let to him unfurnished.

A woman is entitled to be registered as a local government elector:

(1) Where she would be entitled to be so registered if she were a man; and

(2) Where she is the wife of a man who is entitled to be so registered in respect of premises in which they both reside. In this case she must, however, be at least 30 years of age, and must be free from legal disqualification.

A soldier or sailor does not lose a vote which he would have had in respect of his home if he had not been serving in the army or navy.

ELECTIONS

Election of local authorities is usually by ballot after a candidate has been nominated by two or more electors. In the case of a parish council, however, the election is generally by show of hands unless a poll is demanded. Since 1914, any person who has resided for twelve months within a county or borough is eligible for election to the council, and any local government elector may be elected to the other authorities. Women are no longer disqualified by sex or marriage from being members of local authorities.

The local authorities are renewed, wholly or in part, at fixed intervals—usually three years. The intention is that the representatives may be kept in correspondence with the opinions current among the electing body. While such is the intention of the representative system, in practice the balance of opinion in the local councils upon the most important issues before them is often widely different from that prevailing among the citizens.

Representation in the case of a borough, for example, turns upon securing ward majorities. A minority spread evenly over a borough may be altogether unrepresented. If, however, its forces are more fortunately distributed, it may get representation much in excess of its due.

On the other hand, cases are not infrequent where the relative representation of various parties is distorted to the point of absurdity. This is very well illustrated by the following table showing the result of the municipal elections in the city of Liverpool in November, 1922.

TABLE SHOWING HOW REPRESENTATION WAS DISTORTED BY LIVERPOOL ELECTION, NOVEMBER 1, 1922

Party	Candidates	Poll	Seats won	Seats in proportion to votes
Conservative	15	50,270	15	10
Labor	19	34,372	1	7
Liberal	6	11,463	2	2
Nationalist	13	9,184	3	2
Protestant	3	3,720	1	1
Independent	3	2,632	nil	
Co-Liberal	1	1,821	nil	1
Communist	1	2,181	1	
	61	115,643	23	23

THE CONTROLLER AND THE MUNICIPAL CHARTER

(With Special Reference to City Manager Charters)

BY WILLIAM WATSON
New York Bureau of Municipal Research

The functions of the controller should be expressed in standards rather than in methods which are continually changing. :: :: ::

THE common conception of the city controller is rather vague. He seems to be regarded in a way as a not too benevolent detective with mathematical propensities; a sort of crotchy public rooter for "sterling qualities" in office; a humored watchdog, sometimes rather provokingly noisy, particularly when the electorate wants to sleep. His office is commonly regarded as the place where "red-tape" is manufactured and dry as dust figures and statistics are ground out. A pertinent article[1] in a recent REVIEW told that even high authorities had failed to exhibit comprehension of a controller's functions. Although city manager charters are documents of a heralded modern movement in government, in most of them, as in older charters, the expression of the controller's functions is as inadequate as it is varied. They, too, seem to have only scouted a full conception of the controller's functions.

In view of what seems to be a poverty of formulated opinion on the controller's functions and their expression in the charter, it is thought that a statement of principles will not be disdained, may fill a need or at least will clarify debate.

[1] "The United States Comptroller General and his Opportunities," by Wm. H. Allen, NATIONAL MUNICIPAL REVIEW, February, 1923.

AN OUTLINE OF THE CONTROLLER'S FUNCTIONS

The officer referred to in this discussion as controller is the controlling financial executive, irrespective of his local title. The functions of city controller may be briefly stated in general terms as follows: (1) To see that all the revenue and other receipts are legally, honestly and accurately collected and deposited to the city's credit or satisfactorily accounted for; (2) to see that disbursement of cash is not made unless the expenditure involved is legal, honest and accurate; (3) to provide financial information that will be complete for administrative purposes and for legislative and citizen appraisal of financial management. The function of presenting financial statements is not put last to indicate its relative importance. In order of importance, it could as well be stated first. The controller, or comparable official, frequently has other functions or duties that are ex-officio or that may be delegated to him as chief financial officer. He might also justly be assigned the functions which would cover an audit of operating managment and methods. Those are not pertinent, however, to this discussion of his functions only as controlling financial executive.

The scope of action to be taken by the controller, required by a literal interpretation of the functions enumerated above, is presented in outline form as follows:

I. *Establish the facts necessary to determine whether financial transactions are legal, honest and accurate.* This action comprises what is known as "auditing." Taken in conjunction with (II) below, a "continuous" or "pre-audit" is provided for. The facts to be established are divided into two main classes, A and B, as follows:

A. *Facts about transactions that result in revenues and other receipts:*

1. *Whether the correct amounts accrued before collection are completely recorded.* Examples of such accruals are taxes, special assessments, water rents and miscellaneous sales.

2. *Whether the above amounts are collected at the time provided or otherwise satisfactorily accounted for.* This action extends to the controller's seeing that provisions for tax sales are complied with.

3. *Whether collections coincident with accrual are for the correct amount established by law or executive order.* Examples of such collections are those from licenses, permits and fees.

4. *Whether all collections are promptly deposited to the credit of the government.*

5. *Whether the legal or executive provisions for the safe custody of the city's cash are complied with.* Examples of such provisions are those for security to be furnished by city depositories, limit upon amount of bank balances, satisfactory financial condition of banks chosen as depositories and surety bonds of individuals who are custodians.

B. *Facts about transactions that result in expenditure.* (These facts are subdivided into classes: a, b, c.)

(a) *Facts about transactions evidenced by claims only for personal service.* These claims include payrolls.

1. *Whether the payees were actually employed in the service of the city.* Was the payroll padded with fictitious names?

2. *Whether the payees were employed in accordance with whatever employment regulations, civil service or other, that are in effect.*

3. *Whether the time credited to each payee was earned.* Was the payroll padded with more time than the employees put in?

4. *Whether the respective rates of pay appearing on the claim are those specified by salary or wage regulations or agreements.* Did the operating executive or supervising employee slip over an unauthorized increase in pay rate?

(b) *Facts about transactions evidenced by claims only for expenditure other than for personal service.* These claims include those covering purchase of supplies, materials, equipment and contractual services.

1. *Whether the quantities of commodities or services specified in the claim were actually received by the city for its use or benefit.* Is the approval on an invoice by an operating executive merely perfunctory or is his approval warranted by the facts in the case?

2. *Whether the quality of commodities or character of services received agreed with that represented in the claim.*

3. *Whether the unit price, quality or other terms of payment stated in the claim agreed with the terms of the purchase order or contract.*

(c) *Facts about transactions evidenced by claims for any expenditure.*

1. *Whether the extensions and footings of amounts in the claim are arithmetically correct.*

2. *Whether the claim has been paid previously.*

3. *Whether the amount of the claim will exceed the balance of the appropriation or special fund authorization for the expenditure after unfilled purchase*

orders and contracts have been allowed for. This balance of appropriation or special fund authorization is not to be confused with the cash belonging to the fund. In some instances of special funds, the amount of fund cash and the amount of unexpended authorization may be identical. In other instances, however, there may be ample fund cash but the authorization may be exhausted. A corollary to this condition is found in (4) following.

4. *Whether the payment of the claim will create an overdraft on the cash belonging to the fund from which the claim is legally payable.* This cash is not to be confused with appropriation or special fund authorization. There could be an ample unexpended balance of the expenditure authorization and plenty of cash in the bank but no cash in the fund from which the claim is payable.

5. *Whether the fund and appropriation against which the claim is reported to apply are those legally provided for the expenditure involved.*

6. *Whether the government service or activity against which the claim is reported to apply is the one for which the expenditure involved was created.*

7. *Whether the payment made by the disbursing officer is for only the amount audited and ordered paid.*

8. *Whether the personal receipt of each payee is obtained.* This provision does not mean, in the case of payrolls, that the payee shall sign the payroll. The signature purported to be the payee's may or may not be his. A check drawn to the order of the payee and endorsed by him would be a better receipt.

II. *Finally authorize the completion or closing of financial transactions only after he has determined that they are legal, honest and accurate.* This action requires a "continuous audit." That is, the facts outlined in (I-A) must be established daily and before the obligations of collecting officers for the day are discharged by the controller; the facts in (I-B) must be established before disbursement of cash is made. This action requires also that the controller's authorization cannot be countermanded by other executive or legislative authority (unless the legal increase of appropriation can be regarded as a countermand).

III. *Prepare financial statements as of specified dates and periods in which the audited transactions are correctly interpreted to show the analysis of their effect upon financial condition and the economy or waste of methods.* A thorough discussion of the exact nature of these statements involves an exposition of highly controversial matters. One of the latest controversies suggested is whether city reports should contain economic interpretations of the finances of the government. For the purposes of this article, however, it is sufficient to limit the controller's report to one on financial management. The older controversies upon the form of statements are a matter of technique rather than definition of the controller's job. A definition of the contents of the statements in great detail may also be omitted from this discussion. The presentation of summarized and detailed information on the following subjects, however, should be emphasized:

1. *The expendable accrued assets, incurred liabilities against those assets and the resulting expendable surplus or deficit.*

2. *The resources and obligations of each public fund and the resulting surplus available for further appropriation or deficit to be financed.* (Appropriation balances would be included as fund obligations.)

3. *The description and cost of the permanent property and stores owned and the summarized transactions therein.*

4. *The condition of the bonded debt and sinking funds.*

5. *The expenditure and unit costs of each of the various organization units and activities of the government, the means of financing employed, and the resulting surplus or deficit for the fiscal period.*

6. *The assets and liabilities of private funds held by the government.*

IV. *Maintain public records of transactions, the various actions in connection with them and of his interpretation of their effect upon the finances of the government; he will use methods of recording, that will insure accuracy of the records, that will eliminate mystery and ambiguity in the information recorded and that will operate as simply as possible.*

It will be observed that throughout the outline presented, methods or systems of accounting have not been specified. We are concerned here with what the controller has to do rather than the way in which he is to do it. The matter of method is a technical one, involving billing systems, forms of financial stationery, detailed document procedure, classification and description of accounts, ledgers, registers, etc. The use of the best methods will probably follow, if the action to be taken by the controller is comprehensive.

PRINCIPLES FOR THE EXPRESSION OF THE CONTROLLER'S FUNCTIONS IN THE CHARTER

Approaching the subject of what a charter ought to contain and what ought to be left to provision of ordinances and executive order, the writer defers to those who are qualified to speak authoritatively. Nevertheless, experience with governmental surveys and drafting and installing accounting systems has indicated that municipal charters commonly hamper rather than authorize the establishment of the means of complete fiscal control and information. They frequently require the continuation of details of routine that have become merely expensive and troublesome formalities.

The reason that is true is because the charters omit provision for "standards"[1] to be maintained while providing for details of method. For example, the way a record book shall be ruled, where and how documents shall be filed, the kind of paper on which a report shall be printed and the size of type to be used in printing are provisions for method and most unimportant method at that. Even provisions for important method such as the titles and form of accounts or the approvals of documents, although they may operate to induce requisite standards, will not necessarily insure them. Method may be one thing to-day, another to-morrow. Depending upon the technical experience of the drafters of a charter, required method may impose upon administration the "age of the quill-pen" or controversial technique. Charter provisions for method open the door to evasion or quibbling and will often hamper a competent and conscientious official. At best such provisions are an indirect, if not a fumbling or groping way to express the fundamental law of the city.

A fair example of what is meant by expression in terms of standards rather than method is the outline of the controller's functions, presented previously. The expression of charter provisions in terms of standards, while permitting flexibility in the adoption of method, requires definite accomplishment. It is the comprehensive, direct manner of expressing what the charter usually intends to provide. Charter authorities generally acknowledge this principle if they do not always consistently apply it.

[1] "The Modern City and its Government," by Capes, Chapter VII, PP. 83 and 84.

The exact form of statement of the charter provisions for the functions of the controller is not attempted here. It is perhaps controversial whether the charter should provide at all for administrative organization. If it should, certainly then the expression of the controller's functions in the charter should comprehend those that are outlined previously.

The manner of appointment of the controller and the legislative audit are not in the category of controller's functions. These features are commented upon below, however, because they are important provisions affecting the administration of the controller's functions.

Should the controller be appointed by the city manager (in other charters, the chief executive), appointed by the legislative body or elected? We have no desire to prod our readers with this debated question. Forthwith, then, the opinion is expressed here, for the purposes of this article, that he should be appointed by the city manager. That is heresy to some respected authorities, but our present state of enlightenment leads to that conclusion. The reason, briefly stated, is that the controller is an officer of the manager's administrative organization. It is thought that this assertion will stand the test of argument.

The legislative periodical audit of the controller's report provides the necessary safeguard against possible intimidation of the controller by the manager. For practical purposes that audit need be no more than what is technically known as a "balance-sheet audit." It is in the same category as that kind of audit made for the benefit of directors and investors in a corporation by a public accounting firm. The financial statements of the controller would be verified from the records and a test audit made of vouchers and of the accuracy of the record of transactions. It may also be considered sufficient in smaller organizations to have this audit made at the end of the administrative period. In order to fulfill the purposes of such an audit, it is necessary that it be made by a technically qualified person who is not responsible directly or indirectly to the manager.

In the above outline of the controller's functions he is given no responsibility, direct or indirect, for the accrual, collection or custody of receipts (including the assessment of property), or the incurring of expenditure or disbursement of cash (including the administration of operating departments). In the charter, provision should be made which would exclude the controller from performing those functions. This assertion is based upon the recognized principle that the controller should not be a party to the transactions which he is to audit. An exception can reasonably be made of the comparatively small expenditure for his own office when there is no central purchasing or employing agency.

The principles to be observed in expressing the controller's functions in the charter may be briefly summarized as follows:

1. *The controller's functions should be stated in terms of standards rather than methods.*

2. *The provisions for the controller's duties should comprehend those outlined previously.*

3. *The controller should be appointed by the city manager* (in other charters, the chief executive). The appointment of the controller (or comparable officer) by a superior officer who is himself an appointee of the city manager is not admitted as a violation of this principle. It is not admitted as a qualification of the principle, either, because it is open to attack at least on the ground of inconsistency with (5) below.

4. *There should be a limited or "balance-sheet" audit of the controller periodically under the auspices of the legislative body. This audit in small organizations may be made at the end of the administrative period.*

5. *The controller should not have direct or indirect responsibility for the accrual, collection or custody of receipts, the incurring of expenditure or the disbursement of cash.*

6. *The necessary legal provision should be included to give the controller final and undivided authority to approve the legality, honesty and accuracy of transactions, to make any investigation involving those matters and to prescribe accounting procedure.*

ILLUSTRATIONS FROM CITY MANAGER CHARTERS

Brief comment upon some typical charter provisions will illustrate the foregoing principles. The selection of these provisions from city manager charters will also serve to substantiate the assertion made in the opening paragraph of this discussion about the expression of the controller's functions in city manager charters. The comments upon provisions are classified below under a, b, c, d, e, f and g.

(a) The absence of any provision for a controller in city manager charters is not uncommon. This statement does not include those charters containing provisions of the following nature: (1) An officer constituted or permitted to function as the controlling financial executive but designated by a title other than controller; (2) the controller's functions distributed between two or more officers.

Examples of (1) are in the charters of a number of smaller municipalities where there is provided an officer who is designated variously as clerk, secretary, accountant and recorder. This office often has latent or implied powers of a controller, however, or is constituted to function as such. Or in some charters there may be an officer provided who is designated by such titles as auditor or commissioner of accounts, who is designated to perform such of the controller's functions as are provided for.

The Dayton and Cleveland charters are examples of (2). In the Dayton charter the city accountant functions in certain respects as a controller, sharing a controller's auditing powers with the auditors who are public accountants appointed by the commission and a controller's authority to act upon purchase orders and contracts with his superior, the director of finance. The Cleveland charter is similar in these respects; the office of city accountant is designated instead as commissioner of accounts.

In certain other charters, however, there is no office either designated as controller, given powers or so constituted that it could function even in part as that of a controller. These are the charters meant when it is stated that there is no controller provided for.

(b) There is scarcely a thoroughgoing example of expression of the controller's functions in terms of standards rather than method.

Legal technique in drafting charters or local considerations of expediency may possibly require a lapse at times into statements of charter provisions in terms of method. Such a circumstance may account for the provision for "appropriation accounts" in the Cleveland charter, although the purposes to be served by appropriation accounts are provided for elsewhere in that charter. In many other charters, however, dependence is placed almost entirely upon provision for method to the exclusion of provision for standards. Some of the more common of such

provisions are those requiring that claims shall be itemized, that claims must be sworn to by the claimant, that claimants may be questioned, that claims must be approved by certain executives. There is nothing in these provisions that will necessarily of itself or together insure official responsibility for the legality, honesty and accuracy of the transactions that are involved. A most illegal, dishonest or inaccurate claim may be itemized in the minutest detail. A claimant who renders a dishonest claim will be only intimidated but not prevented in the act by taking an oath. If the claim is innocently inaccurate, the oath will not correct the error. If the validity of the claim has not been established by the process of audit, it will be of little value, except in a case of litigation, to require the claimant to take an oath. An executive may occupy himself at putting his signed approval on claims for an hour at a time without examining one of them or knowing whether they are right or wrong.

It is not intended to imply that these various steps in procedure are not valuable to the controller in determining whether a claim shall be paid. Certainly he could not intelligently pass upon a claim that was not itemized, while the other steps in procedure are valuable to him as evidence and as a record of the authority on which he based his action. The point is, which will bear repetition, that complete auditing control is not provided for when the provisions are in the form of isolated details of method instead of the standards comprehended in the outline of the functions of the controller. As stated previously, the opportunity for evasion is presented. On the other hand, a competent official may be seriously hampered by charter provisions for method. For example, in the Cleveland charter it is required that the "unencumbered balance" be shown in the "appropriation accounts." Some advanced technicians do not now show the unencumbered balance in the appropriation accounts —but instead by means of an "encumbrance file." Thus, if the commissioner of accounts in Cleveland wished to introduce a thoroughly up-to-date accounting system, he would be hampered in that respect at least.

(c) In numerous charters examined with a certain degree of analysis, there was found a general lack of complete provision for the functions of a controller, if his functions as comprehended in the preceding outline are accepted. This usually results when the controller's functions are expressed in terms of method as illustrated above.

(d) Examples were observed in existing city manager charters of the following variations in provision for the appointment of the controller by the manager: (1) Manager appoints officer designated specifically as controller (or comptroller) and functioning as such; (2) manager appoints officer designated by another title but functioning as a controller; (3) specified that manager appoint all officers, named or unnamed, which would include controller; (4) implied that manager appoint all officers (which would include controller); (5) manager appoints controller's superior officer who in turn appoints controller (or comparable officer); (6) manager himself functions as a controller (under another title). The last type could frequently be obviated by a redistribution of functions in existing offices so that neither the manager need act as controller nor a new position be created.

(e) In the larger number of charters the controller (or auditor, etc.) is either popularly elected or appointed by the legislative body. With such a pro-

vision it is not necessary to provide for a legislative audit. When the provision is made for legislative audit, it is usually through a board of auditors who have no particular qualifications as such or through a public accountant employed to audit. The audit secured through a board of auditors is usually apt to be more or less perfunctory. If a real audit is expected, necessary qualifications should be attached to the appointees. Cleveland and Dayton are examples of the rather unique type where the auditors appointed by the legislative body also share a controller's functions of continuous audit. Sharing the controller's functions does not violate the principle of legislative audit, but it does intrude upon the principle of centralizing the controller's functions in one officer appointed by the manager or his appointee.

(f) In a number of charters the controller is given or permitted either direct or indirect responsibility for the accrual, collection and custody of receipts and the incurring of expenditure or disbursement of cash. Perhaps the most specific provisions of this nature are contained in the Sacramento charter. There is this to be said for the Sacramento charter, however, that the wide range of functions given to the controller appears to be deliberate and the result of definitized opinion. In many of the charters the scrambling of controller's functions with those that should belong to other officers appears to have happened in the dark. In some of those charters the controller (irrespective of whether he is titled auditor, clerk, secretary, accountant or recorder) may or shall be assessor. In others he is required to collect or handle moneys. In still others there are no provisions which would prohibit his collecting or handling money.

(g) A division of a controller's power to authorize or close transactions is not uncommonly provided for. This division of powers, so far as observed, takes two forms: (1) the power to authorize cash disbursements can be countermanded by the legislative body, as in the charters of Alameda, Alhambra, Long Beach and Glendale, California; and New Smyrna, Florida; (2) certain powers of continuous audit and authorization of the incurring of expenditure are held by or shared between two or more officials, as in the Dayton and Cleveland charters.

The latter form of division of powers is regarded with skepticism if there is anything in the principle of centralization of related functions in one official. The former form of division of powers is regarded as ridiculous or iniquitous. It would seem to imply one of several things: Either a claim can be right when a responsible official after due investigation has produced facts to show it is wrong; or there can be an issue of opinion or judgment in a matter of pure fact; or there is a question of policy about paying a claim that is known to be illegal, dishonest or incorrect. The iniquity lies in the last implication in that it can be interpreted to cover distribution of spoils of legislative office.

OUR LEGISLATIVE MILLS

VI. MASSACHUSETTS, DIFFERENT FROM THE OTHERS

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THE Massachusetts legislature or General Court, as it is designated in the constitution, consists of a house of 240 members and a senate of 40 elected for a term of two years. Until recently the term was only one year but it was found that annual elections placed an excessive burden upon the electorate, increased the expense of government and that frequent campaigns interfered with the work of the members. As a result the constitution was amended in 1918 to provide for biennial elections. The members receive $1,500 per year. The legislature meets annually and there is no restriction on the length of the session, which usually continues for five or six months. There has recently been some agitation in favor of biennial sessions, but in 1923 the legislature rejected a proposed constitutional amendment authorizing such a change.

Unlike the legislatures of most of the New England states, especially Connecticut, Rhode Island, and New Hampshire, representation in both the house and senate is based upon population and not according to local units of government and there are no limitations designed to restrict urban representation. This eliminates the "rotten borough" system which prevails to some extent in other parts of New England and also avoids one of the most serious problems in state government, namely that of discrimination against representation from cities.

FEATURES OF MASSACHUSETTS SYSTEM

The late Professor Reinsch wrote in 1906: "The General Court of Massachusetts is in all respects nearest the people, and most responsive of any American legislature to intelligent public opinion." (*American Legislatures and Legislative Methods*, p. 174.) Writing a dozen years later in 1918, Dr. H. W. Dodds expresses the opinion that "It is not too much to say that the success of Massachusetts, the state in which the committee system is most highly developed, is due in considerable measure to her joint committees. . . . Massachusetts avoids the tumult of the last days more successfully than do other states." (*Procedure in State Legislatures*, pp. 50, 99.) Dr. W. F. Dodd in his recent book on *State Government* (1922) bears out a similar conclusion when he writes: "In Massachusetts each step upon a bill is substantially forced after the preceding step has been taken. The legislative organization there is far from perfect; indeed Massachusetts is one of the states in which there is still a great abuse in the matter of laws of special application. But in respect to general procedure much can be learned by other states from the Massachusetts rules." It is significant that none of these authorities is a resident of Massachusetts so that their opinions are free from any suspicion of native partiality.

What are the reasons for the relative

success which the Massachusetts legislature has achieved? The answer to this question is to be found in the absence of any limitation upon the length of the session; the joint committee system; the custom that every proposed bill should be given a public hearing before a committee; the rule in regard to the date for introducing measures; the rules requiring not only that all measures be reported out of committee but that such reports shall be made before a certain date; the absence of committees highly privileged under the rules; the leadership of the speaker and president of the senate; the governor's influence upon legislation; the recent budget system; the wide use of unpaid special commissions to investigate and report on proposed legislation of importance; and the central location of the state capital.

JOINT COMMITTEE SYSTEM

All of the standing committees except those on ways and means, judiciary and the procedural committees on rules, engrossed bills, bills in the third reading and the house committees on elections and pay roll are joint committees. For certain purposes the separate committees on rules meet jointly, the committees on judiciary almost always meet jointly, and since 1920 by special arrangement the house and senate committees on ways and means have held joint sessions on the budget so that practically all the work is by joint committees. The committees consist usually of three or four members from the senate and eight or eleven from the house and a senator is always chairman. A member from the house is selected as clerk of the committee thus eliminating the expense and political abuse involved in employing paid secretaries for such work. This method of providing for committee clerks has also been highly satisfactory from the point of view of efficiency because there is an incentive on the part of the clerk to handle the affairs of his committee in a thorough and business-like manner in order to obtain important committee appointments and possibly a chairmanship in the future.

After consideration by a joint committee bills are reported to either branch, except money bills which are always reported to the lower house, an attempt being made to secure an equal distribution of business between the two houses. If passed the bill goes directly on the calendar of the other house without a second committee stage. The joint committee system saves time and effort on the part of the members of the legislature and also that of the citizens who oppose or favor a measure; it makes possible a more careful and thorough consideration of measures; gives the less experienced members of the house the benefit of the advice and suggestions from the older members of the senate; avoids shifting of responsibility and tends to reduce friction between the houses thus securing some of the advantages of a unicameral system without any of its defects. In other states there seems to be a somewhat fanciful objection to the joint committee system on the ground that the larger number of representatives could outvote the senators and that trouble would arise over assigning the chairmanship to a senator, but in Massachusetts this has caused no difficulty and there is not a trace of friction.

There are at present thirty joint committees. Each senator is on three or four such committees and if he belongs to the majority party, is generally the chairman of at least one. Each representative usually serves on one or two committees and there is a rule that no member shall be required to be chair-

man of more than one. As in all legislative bodies certain committees such as those on ways and means, judiciary, cities, etc., are the most heavily burdened but there is a fairly equitable distribution of business among the other committees, only about nine of which received in 1923 less than twenty-five bills. While there are perhaps a few more committees than necessary the multiplicity existing in many states is avoided; members do not find their efforts divided among six to nine different committees as in some other legislative bodies and practically all of the committees are integral parts of the legislative system carrying a fair amount of business.

None of the committees is especially privileged in regard to the control of debate or in the reporting of bills referred to it. The committee on rules in each branch is, however, a rather powerful body. The presiding officer of each house is chairman of his respective committee and the majority floor leader as well as the leading members of the house and senate have seats thereon. To this committee are referred all measures that are introduced after the date set for the filing of bills and the committee reports to its respective house whether or not the rule shall be suspended to allow introduction. Other matters such as orders authorizing committees to travel or to employ stenographers or involving special investigations go to this committee for report. The committees on ways and means and judiciary also have rather large influence due to their importance and because of the fact that they contain among their membership the leaders of the majority party. But these committees do not derive their prestige from rules which give them control over debate or permit them to change the regular order of business.

PUBLIC HEARINGS AND CHECKS ON COMMITTEES

Custom requires that every bill no matter how trivial or unimportant should be given a public hearing before a committee, the date of which is publicly advertised, through the newspapers and by official bulletins. Oftentimes it is necessary to give more than one hearing on a measure and in fact the more important hearings may extend over several days. The committee hearings are for the most part conducted in an orderly fashion with ample opportunity to both the opponents and proponents to present their arguments. Hearings on measures of importance to the general public or to a large group of citizens are well attended and the proceedings are fully reported by the press of metropolitan Boston. The writer has seen as many as five or six hundred persons at a committee hearing on some important bill, such as proposals for repealing the daylight saving law, increasing the fees on motor vehicles, prohibition enforcement, granting equal pay to men and women teachers, etc. This system produces results that are highly satisfactory. It gives interested parties an opportunity to express their opinions and air their grievances. At the same time the members obtain valuable information on proposed legislation and are able to gauge the extent of popular demand for measures submitted for their consideration, while the general public is educated through the newspaper accounts. The successful working of this system is undoubtedly due in large measure to the location of the capitol at Boston in the center of a metropolitan area containing about half the population of the state and within easy reach of three-quarters of the people of the commonwealth. Although considerable pub-

licity is given to the hearings, especially the important ones, through the newspapers, it is unfortunate that the committees do not keep official records of such hearings nor of their executive sessions which are accessible to the public.

Committees not only grant a public hearing on each measure but the joint rules require that every bill shall be reported to the whole house on or before the second Wednesday in March which may be and usually is extended to the second Wednesday in April. Upon the expiration of this period all measures in possession of a committee must be reported within three days. This report must recommend that such bills be referred to the "next General Court," which means that the measure goes over to the next session when it may be taken from the files by any member. This report is used in cases where the committee is unable or does not wish to reach agreement. But at this stage any member may move that the original bill be substituted for the report "reference to the next General Court" and if such a motion receives the required majority the measure is brought before the whole house. Every measure must, therefore, be reported by the committee to which it has been referred prior to the last month or two of the session either favorably, adversely, or by "reference to the next General Court." Committees are thus kept from pigeonholing measures in such a manner that they never see the light of day, while the rule requiring report before a certain date avoids the last-minute rush which is common in many legislative bodies at the close of the session. The rule requiring a report on all measures of course lengthens the sessions, but it has the advantage of getting all business before the legislature in time to dispose of it in an orderly fashion.

LEGISLATION FORCED STEP BY STEP

Measures reported out of committee go on the calendar of either branch, except money bills which are reported to the house, and are taken up in a specified order which cannot be set aside except by unanimous consent or a special majority and which must be completed as noted above before the expiration of the session. It is the practice of the present speaker to lay before the members of the house each week information showing the number of bills referred to each committee, the number reported by each to date, and the number still in committee as compared with the status at the same period in previous years. Recently this data has appeared weekly in the house journal. This practice keeps the members informed as to the progress of legislation and has been responsible for producing competition among the committees to finish their work as speedily as possible. Another helpful feature is the weekly publication of a "Bulletin of Committee Work and Business," which shows the committee to which each measure has been referred, the date set for hearings, the committee report, the action by each branch, and the action of the governor. This bulletin is not only furnished to the legislators but is issued for general distribution. In this way the members of the legislature and the public are furnished with accurate, carefully arranged and easily understandable information concerning the status of any measure. A daily list is also published showing the committee hearings each day as well as a calendar for each house setting forth the business which will come before it during the day.

The procedure is thus arranged in such a manner as to make possible a careful consideration of every measure by a joint committee; to provide

for ample publicity; the reporting of all bills to at least one house which then go through a regular order which cannot be changed except by a special majority, and the forcing of legislation step by step. Such a procedure, of course, makes it necessary for the legislature to remain in session from five to six months each year which has certain disadvantages as well as merits. It is clear, therefore, that the Massachusetts system is not adapted to states where the session is definitely limited in the constitution.

Besides the unlimited duration of the session, and the rules of procedure, there is another requirement which assists the legislature in conducting its business in an orderly fashion. The rules provide that practically all proposals for legislation must be introduced on or before the second Saturday of the session. Petitions or bills coming in after that time go to the "next General Court" unless the rule is suspended by a four-fifths vote of each branch. The only exceptions to this rule are reports from the state departments, commissions or special committees appointed to investigate various matters or legislation based upon recommendations in the governor's message, which may be introduced at any time. As a matter of fact the rule is suspended when such action is regarded as desirable, but it has a very decided advantage in that, with these exceptions, measures do not come straggling in all during the session; the leaders and committees know early in the session what is before them and can plan accordingly. In 1922 and in 1923 the work of the legislature was still further assisted by a requirement that state officers, heads of departments, and also certain commissions which were authorized to make investigations during the recess should file copies of their proposed bills early in December, the month before the legislature convenes. The present speaker has recently sent requests to members of the legislature urging them to submit as many of their proposed bills as possible prior to the opening of the 1924 session. An attempt is thus being made to get bills filed even prior to the date fixed by the rules, so as to have them printed and distributed in order that the committees may commence work at once instead of marking time for several weeks.

LEADERSHIP

At the present time the legislature consists of 160 Republicans and 80 Democrats in the house and 33 Republicans and 7 Democrats in the senate, thus giving the Republican party a large majority in both branches although a somewhat smaller majority than in 1921 and 1922, when the Democrats had only five members in the senate and about 50 in the house. Partisanship, however, plays a small part in the legislature and an examination of the journal for the last few sessions fails to show a single instance of a strict party alignment on any measure. Also the legislature is not under the domination of the state organization of either party. As expressed by a competent observer and one who was for a long time a member of that body: "It especially resents anything savoring of dictation by party leaders outside the chamber. Few things would more hurt the chances of a bill than to let it be known that it was urged by the state committee of the majority party." At the same time there is most effective and able leadership among the majority party in both houses and the Republican party assumes credit if not responsibility for the showing of the legislature.

The principal leaders of the house

are the speaker, the floor leader who serves on the rules committee, the chairman of the committee on ways and means, the chairman of the committee on judiciary, and a half-dozen others who gain prominence because of their ability and personality. The floor leader is placed in front of the speaker so that he may be promptly recognized by him, while the chairmen of the committees on ways and means and judiciary have especially assigned seats. In the senate, with only forty members, there has not been the same need for highly developed leadership, but the president of that body and the floor leader have been largely responsible for the direction of legislation. The leadership of these officers has been effective and the positions have been held by men of unusual ability and with a broad interest in improving the substance of legislation and legislative procedure. The list includes within recent years such names as President Coolidge, who was at one time president of the senate; the present governor, Channing Cox, who served first as chairman of the judiciary committee and later as speaker; Louis A. Frothingham, now a member of Congress, and author of *The Constitution and Government of Massachusetts*, and the present speaker, Benjamin Loring Young, who has taken a large part in the establishment of the budget system, in the new plan for continuous consolidation of the laws, in bringing about various changes in the rules strengthening legislative procedure, and who has made a scientific study and taken a keen interest in the general improvement of legislative methods and output.

The positions of president of the senate and speaker are eagerly sought for not only as places of power and honor but also because they are regarded as stepping-stones to the office of lieutenant governor, who by tradition has a strong claim on his party's nomination for the governorship. It is perhaps this factor that has furnished the incentive to leadership in the Massachusetts legislature. A presiding officer, a floor leader, or the head of an important committee, if ambitious, knows that his future depends upon his record in the chair and upon the manner in which he conducts his work. As long as a presiding officer cares to serve it is the custom to reelect him but, when a vacancy occurs by retirement or resignation, a brisk contest usually takes place. The various candidates then carry on a campaign after the close of the session prior to the primary and final elections in an attempt to pledge as many of the members or prospective members as possible. If one of the candidates has an extremely strong following the other may retire, but if this is not the case the fight is carried into the party caucus which is called two or three days before the meeting of the legislature.

LOCAL AND SPECIAL LEGISLATION A MASSACHUSETTS WEAKNESS

The chief weakness of the Massachusetts legislative system is the mass of local and special legislation. About half of the actual output of the legislature, and even a larger proportion of the bills introduced, consists of special and local measures authorizing cities and towns to borrow beyond their debt limits; granting pensions to specified local employees; changing the names of city officers; creating public utility, charitable, and educational corporations; regulating the location of garages in a particular city; authorizing a specified charitable society to acquire property; authorizing a particular city to sell or lease certain land held by it for playground purposes; authorizing the registration of

Mary Jones as a chiropodist without examination, etc. Then, too, there are numerous measures regulating the details of administration which should fall within the jurisdiction of some department or commission. In 1923 out of a total of 494 acts, there were 259 general acts and 235 special ones. The following table shows the number of special and general acts passed at each session since 1915:

SPECIAL AND LOCAL LEGISLATION
1915 TO 1923

Year	*Number of General Acts*	*Number of Special Acts*
1915	390	384
1916	302	367
1917	345	376
1918	295	189
1919	364	242
1920	330	299
1921	253	249
1922	281	265
1923	259	235

This means that a large part of the time of the legislature is taken up with proposals of purely local significance and with details of an administrative nature at the expense of measures of state-wide interest and large importance. The legislature has attempted to reduce the burden somewhat through the introduction of a budget system, the requirement that all local measures be advertised in the locality affected, and the requirement that petitions for pensions must come from the proper local officials rather than from individuals. Yet the bulk of special legislation is still too great. The remedy would seem to be not in a constitutional prohibition of special legislation but in the adoption of a careful home-rule system for cities and the development of administrative machinery for passing upon requests for special and local legislation.

MOST IMPORTANT WORK OF 1923 SESSION

Turning aside from the general features of the Massachusetts legislative system to the work of the last session, one finds that both branches in 1923 were in control of veterans. In the senate one member had served for twelve years in the legislature, one for ten years, one for nine, one for eight years, twenty-five had served from three to seven years, seven had served for two years, leaving only four of the forty members without previous legislative experience. In the house one hundred and ten members, or slightly less than one half, had been members of the preceding legislature, while a considerable number especially among the leaders had seen at least a half-dozen years of service in the legislature. There were two women in the 1923 session, one from each party. Both took an active part especially in social and educational legislation. In the house the Republican leaders were not always successful because there was a group of insurgents ready at any time to combine with the 80 Democrats, but when the leaders did lose it was usually to a group headed by a veteran and not by a newcomer. There were, however, two or three younger men, well under thirty years of age, who became influential leaders of the majority party during the session.

During the session of 1923, the two houses considered 2,000 separate bills or reports on practically all of which public hearings were given and reports made by committees. Out of this mass of proposed legislation 492 acts and 74 resolves were enacted, a somewhat smaller amount of legislation than in previous years. The session was also one of the shortest in the last few decades. Prohibition was one of the big

issues as it had been in 1922, and not only divided the members into groups but also led to much wavering and uncertainty on their part. In the fall of 1922 the voters, by a majority of 103,000, defeated a state prohibition enforcement act which had been passed at the 1922 session of the legislature. Notwithstanding the expressed attitude of the people, the legislature in 1923 passed a new enforcement act. At the same time the legislature enacted the so-called Adlow Bill providing for a referendum on the question of repealing the Eighteenth Amendment and of modifying the Volstead Act so as to permit the sale of light wines and beer. The real purpose of the proposed referendum was to take the issue of prohibition out of the national elections in Massachusetts in 1924, and from this point of view the action of the legislature in passing the act was not so much an indication of inconsistency as it was a matter of practical politics. The two bills reached the governor at the same time. He signed the enforcement bill but vetoed the referendum measure, and his veto was sustained following a short debate. There was much shifting of votes and uncertainty on the measures which caused criticism of the legislature. The senate voted wet twice and dry once, and the house voted dry twice and wet on one occasion, which is to be explained partly by the desire of certain leaders to take the issue out of the national election of 1924, and partly to the fact that a considerable group had not yet made up their minds on the issue and were found now on one side of the fence and again on the other. It is certain, however, that the wet and dry issue will play an all-important part in the next election.

Another important measure enacted in 1923 was a tax of two cents per gallon on all gasoline sold for motor vehicle fuel in order to provide additional funds for highway improvement. This tax had been recommended by two special commissions and was also approved by Governor Cox in his message of 1923. The passage of this bill through the legislature was attended by many battles between automobile dealers and owners and administrative officials and members of the legislature who favored it. The fight has not yet ended, as a referendum petition has been filed and the act will go to the voters in 1924.

The contest over the revision of the limitations on the height of buildings in Boston is interesting as showing the effect of the constitutional provision adopted in 1918, giving the governor authority to return measures to the legislature with suggestions for improvement. For several decades there has been a law limiting the height of buildings in the down-town district of Boston to 125 feet. Certain real estate and hotel interests as well as the city administration favored an increase in this limit by the 1923 session. On the other hand, many down-town real estate owners opposed raising the limitation on the ground that higher buildings would increase the fire hazard and add to congestion. A bitter fight ensued between the two groups, but the legislature finally passed a bill raising the limit to 155 feet. The opponents carried their fight to the governor, who granted a hearing during which certain objectionable features of the measure were brought to his attention. The governor then returned the bill to the legislature with criticisms and appointed a commission of five members to study the whole matter. After ten days the commission reported that with certain amendments the increase in the height limit would not be against the best interest of the city; the bill was changed

slightly, was again passed and this time signed by the governor.

A fourth measure which attracted attention was the settlement of the national bank tax problem. A court decision declaring unconstitutional the state tax on the shares of national banks made necessary the refund of some $3,000,000 in taxes already collected. The leaders of the legislature from both parties showed considerable courage as well as good business sense in this matter. Instead of meeting the emergency through a bond issue or by an increase in taxes spread over a long period, the situation was faced by providing an additional 10 per cent surcharge on all tax bills due in 1924. This is apt to operate as a "boomerang" in the campaign of 1924 as the tax bills will be distributed on the eve of the election. The leaders recognized this and the incident shows that legislators can display courage and independence if necessary. Only three bills enacted during the session were vetoed by the governor and in each case his veto was sustained.

The 1923 legislature should be judged by what it failed to do as well as by what it actually accomplished. In this connection it refused to tamper with the direct primary law so as to provide for a return to the convention system; it failed to recommend a constitutional amendment returning to annual elections or adopting the biennial session plan; action on old-age pensions which is favored by the Democrats and also by some Republicans was wisely delayed by the appointment of a special committee to investigate the subject; the minimum wage law was not made compulsory, which, in view of the recent decision of the United States supreme court, preserved the Massachusetts law; it refused to increase the income tax rate on intangibles and thus steered clear of a danger which has seriously weakened the income tax in some states. On the whole, the Massachusetts legislature in 1923 was a conservative body whose leaders gave the people a business man's government. It is thus popular with the taxpayers and business men, although those who are looking for fads in legislation and a wider extension of social and industrial legislation are not so well pleased. In fact, the outstanding feature of the 1923 session was not its legislative program, but the adherence to a policy of economy by which the direct state debt was decreased and the necessity of raising the state tax avoided.

NOTES AND EVENTS

Ed. Note.—The illness of the editor at the time of going to press made necessary a reduction in the size of this department this month.

Cleveland Selects a City Manager.—The new council elected under proportional representation has named William R. Hopkins of Cleveland as the first manager of that city. Mr. Hopkins is president of the Belt and Terminal Realty Company, also the president of the Columbia Axle Company. He is a graduate of Western Reserve University and of the Western Reserve University Law School. While a student at the University of Chicago he wrote a thesis on the street railway situation in Cleveland which was regarded as a model of its kind. He has been a resident of Cleveland since 1874, and built the Belt Line Railroad. The verdict of the Citizens' League is that Mr. Hopkins is exceptionally well qualified by education, experience and character for the office of manager. He declared without qualification that he accepts the office free from any personal or political obligation which will interfere with his freedom of action in serving the city to the best of his ability.

The vote of the council-elect in favor of Mr. Hopkins was unanimous.

Detroit Improves Its Council.—Despite a light vote—40 per cent of the registration—Detroit elected November 6 a new council which is believed to contain new vigor, as well as experience. The only contest was on election of the council of nine, chosen at large, on a non-partisan ballot, and the advance "dope" assured the success of several of the nine. The election of Mayor Frank E. Doremus, and of the city clerk and treasurer, also was practically automatic, as no real opposition had appeared. Joseph A. Martin, a young, vigorous contender, defeated the veteran, John C. Lodge, for council president, by a narrow margin. Another surprise was the defeat of present Councilmen Littlefield and Kronk. The new council will contain four present members and five new ones. Of the nine, seven have had experience in public service, guaranteeing some advance over the work of the council for the past five years. Six proposed charter amendments were adopted, none of them affecting the principles of the charter. Anonymous "slates," on religious lines, appeared, but did not affect the result. The city generally stands against injection of religion in politics. Leading Protestant clergy oppose all "extra-legal," secret groups.

Washington Meeting of National Association of Civic Secretaries.—The National Association of Civic Secretaries at their meeting in Washington, November 15 to 17, had a series of round table conferences on practical subjects such as civic committees and how to make them effective, maintaining membership, the arrangement of forum programs, new buildings and their financing, and club housekeeping. About twenty members of the association were in attendance. The following officers were elected for 1923–24: Walter T. Arndt, of New York, president; Mrs. J. W. Doughty, of Kansas City, vice-president; Miss H. Marie Dermitt, of Pittsburgh, treasurer; and Robert E. Tracy, of Philadelphia, secretary.

Members of the association were entertained by Miss Harlean James, at her home, on Thursday, November 15, at 4.30, and on Friday evening, November 16, attended the performance of Robert E. Lee.

Two special committees were authorized. One a committee to survey the various clubs, and analyze their different functions, so that the program committee can arrange programs to meet actual requirements. Second, that a special committee be appointed to consult with other organizations, so as to co-ordinate the other programs, build up civic organizations by co-operation, and agree upon the date and place of the next conference.

One of the most important subjects developed at this conference was Mr. Ingersoll's explanation of how the City Club of New York succeeded in getting the federal government to refund the tax on dues for the past four years.

Robert E. Tracy.

San Francisco Election.—At the election of November 6, the city and county of San Francisco returned Mayor James Rolph, Jr., to office for the fourth consecutive term. Nine of the eighteen members of the board of supervisors were up for re-election—five were returned and

four were defeated. The incumbent district attorney, sheriff, assessor, county clerk, auditor and coroner were returned.

One of the unexpected features was the defeat of one of the police judges. The incumbents of the two offices to be filled had been endorsed and vigorously supported by the local bar association. The upset is stated in some quarters as due to a decision in a union-labor case that was displeasing to organized labor.

Another unexpected feature was the leading of the supervisorial ticket, by a margin of nearly 10,000 votes, by Phil Katz, who won the Congressional Medal of Honor as a sergeant of the 363d Infantry—"San Francisco's Own." Katz' candidacy was his first venture into the political field, and without organization, his remarkable run was the surprise of the election.

The election marked San Francisco's abandonment of the preferential voting system. The use of voting machines was authorized by a local charter amendment last November and by the last legislature; these were used in over fifty of the six hundred and four voting precincts. As machine-voting does not permit of the use of choices, a friendly suit was instituted to secure judicial determination as to whether the charter amendment permitting the use of voting machines operated to repeal the charter provisions prescribing preferential voting; the court ruled that it did. As the preferential system in San Francisco had operated practically the same as the plurality system, no one was particularly concerned.

⚜

Los Angeles Now Has Civil Service Police Chief.—Los Angeles, by undertaking a very radical experiment, has given notice that it is tired of seeing its chiefs of police come and go.

At the June elections this year an amendment was added to the city charter placing the chief of police upon the classified civil service list. The incumbent campaigned for the amendment and declared that he would gladly take the examinations when the time came.

For some weeks, after the passing of the amendment, there were rumors from the police commission headquarters, that all was not well within the police department. A demand that certain changes be made in the personnel of the police department was refused by the mayor. Before long it appeared that the chief of police would authorize these changes. This forced a breach between the mayor and the incumbent chief, which resulted in a dismissal of the incumbent, Louis D. Oaks. Meanwhile, the mayor had asked Chief August Vollmer, of the Berkeley police department, to assume control in Los Angeles pending the civil service examinations. He accepted the temporary appointment and began work in Los Angeles.

Within a few weeks examinations by a specially authorized board were prepared, and a number of men from the Los Angeles department and from departments in neighboring cities tried their hands at the examinations. (It is of interest to note that Mr. Oaks did not take the examinations.) Chief Vollmer won first place on the list, and was shortly appointed to the position. He is one of the best known chiefs in the United States and now has an opportunity, protected by the provisions of the civil service law, to operate his department presumably without any interference. He almost immediately announced to the public that the police commission was not in sympathy with his method of directing the force.

After some weeks of hostilities, on November 13, the mayor removed his two associates from the commission, and announced new appointees. One of these is the superintendent of the Anti-Saloon League in Southern California.

It is publicly accepted at the present time, that Chief Vollmer is making good, and Los Angeles is looking forward to his permanent tenure with a great deal of relief. Down to the present year, at least once a year there has been a shake-up in the police department. This has meant that almost no one has had any confidence in the system, under which Los Angeles has operated for so many years.

C. A. Dykstra.

CONSTITUTIONAL TAX EXEMPTION

The Power of Congress to Tax Income from State and Municipal Bonds

By
EDWARD S. CORWIN
McCormick Professor of Jurisprudence, Princeton University

"What is needed is not further tinkering with the Constitution, but an Act of Congress assertive of its present powers."

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THE POWER OF CONGRESS TO TAX INCOME FROM STATE AND MUNICIPAL BONDS

BY EDWARD S. CORWIN

McCormick Professor of Jurisprudence, Princeton University

"ARISTOCRACY," wrote Chateaubriand, "has three stages: first, the age of force, from which it degenerates into the age of chivalry, and is finally extinguished in the age of vanity." The fact that there are between thirty and forty billions of privately held public securities in this country which are either partially or totally tax-exempt [1] suggests that American aristocracy is rapidly achieving the second stage of its predestined cycle without, perhaps, having altogether left the first stage behind. Some ingenuity has been expended in certain quarters in an effort to show that the immunity of a considerable fraction of the wealth of the country from taxation makes no particular difference to anybody; an argument which if valid ought to hold even though the fraction were increased indefinitely. Certainly, when we learn that the late Mr. William Rockefeller's estate of sixty-seven millions comprised some forty millions of tax-exempt bonds, we conclude that there was a reason; and we also recall the maxim *ex nihilo nihil*. If investors in tax-exempt securities derive a benefit from this type of investment somebody else pays—the question is who?

The actual operation of tax exemption in this country would seem to be somewhat as follows: The national government adopts a system of income taxation by which incomes are taxed at progressively higher rates. In order to escape the upper reaches of the tax, men of large income invest in tax-exempt securities, especially municipal and state bonds, the exemption of which is most nearly absolute. This in turn enables the states and municipalities to float securities on advantageous terms in comparison with private concerns. A saving is thus effected momentarily to the local taxpayer, but at his expense both as taxpayer to the national government and as consumer. For it is apparent that if the national government cannot raise adequate revenue by progressive income taxation it must have recourse to other methods which bear more heavily on the average citizen; and it is equally evident that if private producers have to pay higher rates of interest in order to obtain adequate capital, it is the consumer who ultimately foots the bill. Nor does the advantage of the local taxpayer con-

[1] This amount includes nearly twenty-three billions of liberty bonds of the five issues, of which the first, of two billions, so far as it has not been converted, remains totally exempt from national taxation. Capital holdings of the succeeding issues, except the Victory Notes, have been exempt from the normal income tax in varying amounts, but not from the surtax; and since the expiration of the two-year period from the ratification of the treaty with Germany even this imperfect immunity has largely lapsed. Such holdings, however, still remain beyond the reach of the taxing power of the states for the most part, but whether this fact merits consideration in this connection would depend on factors which differ with each state.

tinue indefinitely, since the easy terms upon which they find capital procurable offers an obvious temptation to borrowing on a large scale on the part of states and municipalities. Thus, whereas state and local bonds afloat in 1913 totalled less than four billions, they now total fourteen billions, some of which, it is permissible to hold, represent expenditures, which, if they should have been made at all, should have been made from current funds. So by one and the same system of tax evasion governmental extravagance is promoted, profitable business expansion is put at a disadvantage, the theory of progressive income taxation is undermined, and a tax-exempt aristocracy is created out of the wealthiest part of the community.[2]

Not all tax exemption rests primarily on constitutional grounds. When national securities are exempt from national taxation it is only because congress has so decreed, although once given its promise may possibly constitute a binding contract which may not be repudiated consistently with "due process of law." And the same is the case in a general way with the exemption of state and municipal securities from local taxation: such exemption rests in the first instance on the will of the local legislature, but once it is accorded it becomes a contract whose obligation may not be impaired.[3] Exemptions which thus originate solely in legislative policy need not be further treated of in this article, our purpose being to investigate those doctrines of constitutional law which have been interpreted to require that exemption from taxation accompany the *issuance* of public securities. Thus, it is held that national securities are from the moment of their issuance exempt for the most part from state taxation and that state and municipal securities are likewise exempt from national taxation. The two cases, however, are not, it would appear, in all respects parallel. On the one hand, the exemption rests in both cases on judicial reasoning rather than on any specific clause of the constitution; but on the other hand, an important difference appears between the considerations which judges have treated as controlling in the two instances. For logical as well as chronological reasons the exemption of national securities from local taxation will be dealt with first.

I

The judicial doctrine of tax exemption entered our constitutional jurisprudence through the famous decision in *McCulloch* v. *Maryland*,[4] in which in 1819 the supreme court set aside a tax by the state of Maryland on certain operations of a local branch of the Bank of the United States. The opinion of the court by Chief Justice Marshall brings forward at least four distinct, even though not clearly distinguished, grounds for the decision. In a phrase often quoted since, the Chief Justice defines the power to tax as involving "the power to de-

[2] The market price of tax-exempt securities is such to-day as to tempt people of comparatively low incomes—from twenty to fifty thousand dollars per annum. This signifies, of course, that the very rich get their bonds cheaply, so much so, indeed, that while the income tax law pretends to levy surtaxes ranging as high as 58 per cent, the surtax above 31 per cent is virtually inoperative. See Professor R. M. Haig's article in the *North American Review* for last April. Professor Haig also makes the point that the incomes thus benefited are what Gladstone called "'lazy" incomes, which thus seek safe investments, while the risk of developing new enterprises is thrust upon earned incomes. The best thought has always urged that earned incomes should be less heavily taxed than unearned.

[3] Article I, sec. 10, par. 1.

[4] 4 Wheat. 316.

stroy." The inference is that the mere attempt to tax the bank represented a claim on Maryland's part to control or even to wipe out an instrumentality of a government which is supreme within its assigned sphere. But more than that, the opinion continues, while "the sovereignty of a state extends to everything which exists by its own authority or is introduced by its permission," the bank did not fall within this description. So, regardless of the supremacy of the national government, there was "on just theory" a "total failure" of power in the state to reach the bank through taxation. Nevertheless, at the very end of his opinion, Marshall concedes Maryland the right to tax the bank on its "real property . . . in common with other real property within the state," and also "the interest which the citizens of Maryland" held in the institution "in common with other property of the same description throughout the state"; and meantime he has answered an argument drawn by the state's attorneys from the *Federalist* with this observation: "The objections to the constitution which are noticed in these numbers were to the undefined power of the government to tax, not to *the incidental privilege of exempting its own measures from state taxation.*" [5] In other words, the exemption of the bank is thought of at this point as resting on the implied will of congress and therefore to be justified constitutionally as a measure "necessary and proper" for maintaining the full efficiency of the bank as an instrumentality of admitted national powers. In short, while the exemption of the bank from state taxation on its operations was clear, the precise reason for exemption was far from clear. This may have been due to the inherent scope of the taxing power, considered in relation to the supremacy of the national government within its proper field; or it may have been due to the inherent limits of the state's own sovereignty; or it may have been due to the discriminatory nature of the tax attempted in this instance, or finally, to the implied will of congress.

The question arises whether there is a necessary contradiction as between any two of these grounds of decision, or whether they may be considered as together constituting a harmonious whole. The strongest appearance of contradiction emerges from a comparison of the first and third grounds; for if the equal application of a tax to a species of property is guarantee against its abuse, why the proposition that "the power to tax involves the power to destroy"? And why should not any generally imposed tax be valid as to all property within the limits of a state? The answer seems to be that Marshall was trying to draw the line between the *bona fide* taxation by a state of *property* within its limits and an attempt by it to tax an *exercise* of national power within those limits—the former being allowable, the latter not. Yet why not? And here our attention is drawn to the juxtaposition of the first and fourth grounds of decision. Taken together the two grounds spell out the proposition that congress may always exempt instrumentalities of the national government from local taxation when it is "necessary and proper" for it to do so in order to assure the efficient operation of such instrumentalities. What then of the converse proposition, that where an exemption of national agency from state taxation exists, such exemption is to be deemed as resting in the first instance merely on the will of congress, express or implied, and not on constitutional considerations beyond the reach of congress? The fact is that no

[5] The italics do not occur in the original.

clear answer to this question can be gleaned from Marshall's decisions. In *Osborn* v. *the Bank*, he treats the exemption as resting on the will of congress;[6] in *Weston* v. *Charleston*, as implied in the constitution;[7] and subsequent decisions of the court disclose the same uncertainty.[8] Indeed, even when the will of congress is made the basis of exemption, there is still uncertainty as to whether taxation may be permitted in the silence of congress, or the implication of silence should be construed unfavorably to the state's claims.[9] It is submitted, however, that there is no sound reason why these uncertainties should be permitted to continue. With the remedy for any abuse by a state of its power over instrumentalities of the national government securely lodged in congress, there is not the least benefit to be anticipated from the supreme court's troubling itself with the extent of congress's concessions to the states in respect of the taxation of national instrumentalities. Such instrumentalities ought always to be subject to local taxation when they take the form of private property, while any effort of the local taxing power to single them out for special burdens would be void on the face of it. Both of which propositions are fairly implied in *McCulloch* v. *Maryland*.[9a]

II

We now turn to that branch of the constitutional doctrine of tax exemption which restrains the national taxing power in relation to "means and instruments" of the states. At the outset we note an important difference in the operation of the doctrine in the two fields. The principal local taxing power which is caught in the coils of this doctrine is the power of taxing property directly—in other words, the general property tax, which is thereby disabled in the presence of private property which is viewable from another angle as still discharging a

[6] 9 Wheat. 738. Marshall's language here is as follows: "The court adheres to its decision in the case of *McCulloch* v. *the State of Maryland*, and is of opinion that the act of the state of Ohio, which is certainly much more objectionable than that of the state of Maryland, is repugnant to *a law of the United States made in pursuance of the constitution, and, therefore void.*" (The italics do not appear in the original.)

[7] 2 Pet. 449.

[8] See *Van Allen* v. *Assessors*, 3 Wall. 573, in which was sustained the Act of June 3, 1864 (now ¶5219 of the Revised Statutes), whereby certain powers of taxation with reference to national banks were accorded the states; *Thomson* v. *Union Pacific R. Co.*, 9 Wall. 579; *Union Pacific R. Co.* v. *Peciston*, 18 Wall. 5; *Owensboro National Bank* v. *City of Owensboro*, 173 U. S. 664; *Home Savings Bank* v. *Des Moines*, 205 U. S. 503. In the last case J. Moody, speaking for the court, remarks: "It may well be doubted whether congress has the power to confer upon the state the right to tax obligations of the United States. However this may be, congress has never yet attempted to confer such a right." So the point has never been decided. In *Chaplin* v. *Comm'r*, 12 Com. L. R. 375 (Australia, 1911), the commonwealth was held to have the power to authorize state taxation of federal salaries, although such taxation had been previously held invalid without such authorization. Hall, *Cases on Constitutional Law*, p. 1288 ff. See also note 13 *infra*. If a citizen of one state owns bonds of another state, his own state may levy a tax thereon, as on other personal property the situs of which follows the owner. *Bonaparte* v. *Appeal Tax Court*, 104 U. S. 592. In other words, as between states, privately held public securities of state origin are treated as private property solely.

[9] Notes 6 and 8, *supra*.

[9a] See also the recently decided case of *First National Bank of San Jose* v. *Calif.*, decided June 4, last, and cases there cited, to show that the "dealings of national banks are subject to the operation of general and undiscriminating state laws which do not conflict with the letter or general object or purpose of congressional legislation affecting such banks."

governmental function. The national government on the other hand is, practically speaking, denied the power of directly taxing property by the unworkable rule of apportionment which the constitution lays down for such taxes.[10] The only kind of national taxation which is affected by the constitutional doctrine under review is consequently income taxation, which whether it be "direct" or "indirect" in the constitutional sense is to-day relieved by the sixteenth amendment from the rule of apportionment; and the principal operation of the doctrine of tax exemption within the national field has been accordingly to relieve certain categories of *incomes* from national taxation, namely, those derived from state and municipal bonds and state official salaries. By the same token, the extension of the doctrine of tax exemption into the field of national taxation incurs difficulties which it does not encounter in the other field. Both on the basis of what has just been said and for other reasons which will be manifest, these may be set down as follows: In the first place, in the case of the average property-holder or income-taker the burden represented by the general property tax is far greater than the burden of any probable income tax. To illustrate: A tax on income derived from a bond bearing interest at four per cent would have to be twenty-five per cent in order to equal in burden a one per cent property tax on the bond itself; but while the latter is a burden which any citizen may be called upon by the state to meet, the former is one exacted by the national government only of the wealthiest classes and is therefore one evasion of which is rendered possible and profitable only to the wealthy through the operation of the doctrine. In the second place, while it is not so unreasonable to regard a government bond even in the hands of the private purchaser as still an instrumentality of government, since it represents a continuing relationship between the government and the purchaser, to extend the same line of reasoning to income from the bond, the payment and receipt of which is a transaction over and done with once for all, involves a step by no means easy to follow.[11] In the third place, the difference between the national government as the government of all and any particular state as the government of only a section of the people should be taken into account in this connection. As Chief Justice Marshall pointed out in *McCulloch* v. *Maryland*, "The people of all the states and the states themselves are represented in congress," which, therefore, when it taxes a state institution is still taxing only its own constituents, whereas, "when a state taxes the operations of the government of the United States, it acts upon institutions created" by people not represented in the state legislative chambers. Finally, whereas the principle of national supremacy, to which as we have seen the exemption of national means and instruments from state taxation was principally referred by Marshall, is a principle definitely embodied in the written constitution,[12] the theory upon which

[10] Article I, sec. 2, par. 3; sec. 9, par. 4.

[11] A similar distinction is developed by Marshall in *Weston* v. *Charleston*, *supra*, between state taxation of United States bonds and lands sold by the United States: "When lands are sold, no connection remains between the purchaser and the government. The lands purchased become a part of the mass of property in the country with no implied exemption from common burdens. . . . Lands sold are in the condition of money borrowed and repaid. Its liability to taxation in any form it may then assume is not questioned. The connection between the borrower and the lender is dissolved."

[12] Article VI, par. 2.

the doctrine of tax exemption was projected into the national field rests entirely upon principles external to the written constitution, and indeed is logically contradictory of the principle of national supremacy.

The doctrine of tax exemption was first applied in restriction of the national power in 1871, in the case of *Collector* v. *Day*,[13] in which the sole question was whether a general income tax levied uniformly throughout the country could be exacted of a state judge on his official salary. Justice Nelson, speaking for the majority of the court, answered this question in the negative on the following line of reasoning: (1) That a judiciary was a requisite of that "republican form of government" which the United States was pledged by the constitution to maintain in every state; (2) that "the power to tax involved the power to destroy"; (3) that the tax invaded the field reserved to the states by the tenth amendment. Rendered as it was near the close of the Reconstruction Period, during which congress had ridden rough shod over the most sacred pretensions of "State Sovereignty," the decision is easily explicable, especially when we bear in mind the constant solicitation to which the supreme court is always exposed to adopt the rôle of "savior of society"; but these are circumstances which can hardly justify the decision as a rule of law. Would it ever occur to "most people not lawyers"[14] that the republican form of government connotes the elevation of an official class above the common burdens of citizenship? Nor does the maxim that "the power to tax involves the power to destroy" seem particularly applicable to a situation in which its realization would carry with it the destruction of everybody's income. But not only was the court's invocation of the guaranty of a republican form of government extravagantly irrelevant to the actual facts before it, it was also technically unallowable; for the court has said repeatedly that it is not for itself but for congress to say what are the requisites of such a government, that this is "a political question."[15]

Justice Nelson's chief reliance, however, is upon "the reserved rights" of the states, recognized in the tenth amendment; but it does not seem on the whole to be better placed than on the other arguments just reviewed. He contends, in brief, that the right to establish and maintain a judicial department is an "original," "inherent," "reserved" power of a state, "never parted with, and as to which the supremacy" of the national government "does not exist," that "in respect to the reserved powers, the state is as sovereign and independent as the general government." Virginia had made the same argument half a century earlier, and with much better reason, in *Cohens* v. *Virginia*,[16] and had been answered, that as to the purposes of the Union the states are not sovereign but subordinate. Moreover, if the supremacy of the national government does not exist as to the reserved powers of the states, as to what powers does it exist? Modern constitutional law certainly lends Justice Nelson's logic small support. For if the reserved power of a state to establish courts can prevent the incidental operation of an otherwise constitutional tax of the national

[13] 11 Wall. 113. The decision was preceded by that in *Dobbins* v. *Comm'rs*, 16 Pet. 435, in which the court held the salaries of United States officials to be non-taxable by the states, on the ground that the immunity was *implied by the act of congress fixing such salaries.*

[14] The expression is J. Holmes's. See 252 U. S. 220.

[15] *Luther* v. *Borden*, 7 How. 1; *Pacific States T. and T. Co.* v. *Oregon*, 223 U. S. 118.

[16] 6 Wheat. 264. See also Justice Story's opinion in *Martin* v. *Hunter's Lessee*, 1 Wheat. 304.

government, what is to be said of a tax levied upon a privilege granted by the state in the exercise also of powers indubitably reserved to it;[17] or of a direct invasion of the reserved power of a state in the regulation of local transportation?[18] Yet both these assertions of national power have been sustained within recent years. Furthermore, even though it be conceded that the power to maintain a judiciary is a reserved power of so peculiarly sacrosanct a character as to set limits to the operation of otherwise constitutional acts of the national government, yet it would remain to be shown that this reserved power comprised the further power of rendering immune from national taxation the salaries paid the state's judges and already in their pockets. Recent decisions do not tend to support such far-fetched theories of the incidence of taxation[19]—far-fetched and, as Dr. Johnson would have added, "not worth the fetching." For all which reasons the doctrine of *Collector* v. *Day* must to-day be regarded as obsolete; and the same, of course, must also be said of the extension of that doctrine in *Pollock* v. *The Farmers' Loan and Trust Company*[20] to incomes from state and municipal bonds. A special tax on such incomes would fail for vicious classification[21]—perhaps as not a tax at all;[22] but an otherwise constitutional tax cannot in logic or common sense be denied operation upon such incomes; and this would be so even if the sixteenth amendment had never become a part of the constitution.

[17] *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, sustaining a tax measured by net profits on the privilege of doing business as a corporation.

[18] The Shreveport Case, 234 U. S. 342; *Railroad Comm'n* v. *Chicago B. & Q. R. Co.*, 257 U. S. 563.

[19] A tax on income two-thirds of which was derived from export trade is valid, notwithstanding the constitutional prohibition of a tax on "articles exported from any state" (Article I, sec. 9, par. 5), *Peck and Co.* v. *Lowe*, 247 U. S. 165; also, a tax by a state on the profits of a company though these were derived in large part from interstate commerce, *United States Glue Co.* v. *Oak Creek*, *ibid.* 321; also, state and municipal bonds held by a decedent may be validly included in the net value of an estate upon the transfer of which the estate tax imposed by the Act of Sept. 8, 1916, is assessed, *Greiner* v. *Lewellyn*, 258 U. S. 384. Finally, by *New York* v. *Law*, decided Apr. 30, last, a tax on the income from a mortgage is not a tax on the mortgage itself within the sense of *a law exempting the mortgage from taxation.*

III

The sixteenth amendment reads as follows:

> The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

It is well understood that the purpose of this amendment was to overcome in whole or in part the effect of the supreme court's decision in *Pollock* v. *The Farmers' Loan and Trust Company*,[23] but whether in whole or in part only is disputed. In this case the supreme court ruled, first, that incomes derived from property were "direct taxes" and leviable only by the method of apportionment; and secondly, as we have just noted, that incomes derived from state and municipal bonds were not subject to national taxation at all. The question with which we are concerned, therefore, is this: Does the sixteenth amendment overthrow both branches of this decision or only the first? Or to put the issue a little more

[20] 157 U. S. 429; 158 U. S. 601.

[21] See the dicta in *Brushaber* v. *Union Pacific R. Co.*, 240 U. S. 1; *Bell's Gap R. Co.* v. *Penna.*, 134 U. S. 232; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; and other cases.

[22] *Bailey* v. *Drexel Furniture Co.*, 259 U. S. 20; *Hill* v. *Wallace*, *ibid.* 44.

[23] See note 20, *supra.*

definitely: What is the force and effect of the phrase "from whatever source derived" in this context? Does it permit congress to tax all kinds of income without resort to apportionment, or does it merely permit congress to tax without resort to apportionment such incomes as were previously subject to national taxation?

Anterior to *Evans* v. *Gore*,[24] which was decided four years ago and which receives special consideration farther along in this paper, the court, or justices speaking for it, had uttered a number of dicta which have been assumed to sustain the narrower view of the amendment. Thus in *Brushaber* v. *Union Pacific R. R. Co.*,[25] which was decided shortly after the amendment was added to the constitution, we find Chief Justice White declaring that "the whole purpose of the amendment was to relieve all income taxes when imposed from apportionment from a consideration of the source whence the income was derived"—a view of the matter which he asserts shortly afterward to have been "settled" by the previous utterance.[26] And to the same effect is the language of Justice Pitney in the Stock Dividend Case.[27] "As repeatedly held, this [the sixteenth amendment] did not extend the taxing power to new subjects but merely removed the necessity which otherwise might exist for an apportionment among the states of taxes laid on income." This was a five-to-four decision, but meantime, in *Peck & Co.* v. *Lowe*,[28] Justice Van Devanter, speaking for a unanimous court, had reiterated the same proposition.

But now just what is this proposition? The present writer submits that it is neither more nor less than the statement, evident on the face of it, that the sixteenth amendment does not authorize congress to tax without apportionment anything except *incomes*. Let it be considered what were the precise questions before the court in the two more important of these cases. In the Brushaber Case it was whether an income which had accrued since March 1, 1913, could be reached retroactively by a tax enacted the subsequent August, it being contended that the income had now become capital; while in the Stock Dividend Case the question was whether such a dividend was to be regarded as income in the hands of stockholders or merely as evidence of capital-holding. The former question was answered adversely to the taxpayer concerned, the latter favorably; but in both instances it was obviously proper for the court to clarify its position by stating the self-evident proposition offered above.[29]

On the other hand, interpret the statements above quoted as signifying that the amendment still leaves outstanding certain limitations on congress's power of *income* taxation, and what results? This, at least: That the supreme court is chargeable with having "settled" by the mere process of heaping *obiter dictum* upon *obiter dictum* a most important question of constitutional power, which was not remotely involved in the cases before it, on which, so far as the published briefs of attorneys show, there was no argument worthy of mention, and in justification of its determination of which it condescended to utter not one word of

[24] 253 U. S. 245.

[25] See note 21, *supra*.

[26] *The Baltic Mining Co.* v. *Stanton*, 240 U. S. 103.

[27] *Eisner* v. *Macomber*, 252 U. S. 189.

[28] Cited in note 19, *supra*.

[29] *The Peck & Co.* v. *Lowe* and *Baltic Mining Co.* v. *Stanton*, as in the Brushaber Case, the exertion of the national taxing power questioned was sustained independently of the sixteenth amendment.

proof, whether of law or of fact. That the supreme court has no authority "to pass abstract opinions upon the constitutionality of acts of congress" has been repeatedly stated by the court itself;[30] that it has no right to anticipate action by congress by affixing to the constitution a reading thereof not required in the determination of any question before it would seem to be even clearer. Respect for the court, if nothing else, forbids our attributing to it the intention of prejudging the interpretation of the sixteenth amendment unnecessarily. Instead, we should recall the maxim stated by Chief Justice Marshall and reiterated many times since: "It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision."[31]

But it is insisted that in *Evans* v. *Gore*,[32] which followed the cases just reviewed, "the very point" here under consideration was presented and decided; is this so? The principal holding of that case was that a United States judge could not, consistently with the provision in article III of the constitution, that judges of the United States shall at stated times receive for their services a compensation "which shall not be diminished during their continuance in office," be subjected to a national income tax in respect of his official salary. Confronted with the argument that the sixteenth amendment must be deemed to have authorized such taxation notwithstanding the language of article III, the majority speaking through Justice Van Devanter said:

> The purpose of the amendment was to eliminate all occasion for such an apportionment because of the source from which the income came, —a change in no wise affecting the power to tax, but only the mode of exercising it. The message of the president recommending the adoption by congress of a joint resolution proposing the amendment, the debates on the resolution by which it was proposed, and the public appeals,—corresponding to those in the Federalist,—made to secure its ratification, leave no doubt on this point. . . .
>
> True, Governor Hughes of New York, in a message laying the amendment before the legislature of that state for ratification or rejection, expressed some apprehension lest it might be construed as extending the taxing power to income not taxable before; but his message promptly brought forth from statesmen who participated in proposing the amendment such convincing expositions of its purpose, as here stated, that the apprehension was effectively dispelled and ratification followed.
>
> Thus the genesis and words of the amendment unite in showing that it does not extend the taxing power to new or excepted subjects, but merely removes all occasion otherwise existing for an apportionment among the states of taxes laid on income, whether derived from one source or another.

That these words would have been regarded by the court when it uttered them as concluding the question under discussion in this paper may well be believed. Also, it must be said in fairness to the court that the conclusions stated by Justice Van Devanter rest to some extent on a consideration of the question of the scope of the amendment in the light both of fact and of argument. Nevertheless, I venture to challenge the conclusiveness of the facts brought forward by the court and also of the assumption, which I am willing to attribute to it, that the question before it involved the broader question of the status, in relation to the amendment, of incomes

[30] See J. Sutherland's opinion in *Massachusetts* v. *Mellon*, decided June 4 last, and cases there cited.

[31] *Cohens* v. *Va.*, cited note 16, *supra*.

[32] Cited in note 24, *supra*.

from state and municipal bonds and of the salaries of state officials; and let us first take up the question of fact.

IV

As its citations go to prove, the court's chief reliance is upon arguments which were made by Senators Root and Borah after the amendment had been proposed by congress but before its ratification. On the other side, the court admits the contrary opinion of Mr. Hughes, then governor of New York, whose utterance, however, was but one of several of like tenor, as the following quotations show:

It is to be borne in mind that this is not a mere statute to be construed in the light of constitutional restrictions, express or implied, but a proposed amendment to the constitution itself which, if ratified, will be in effect a grant to the Federal Government of the power which it defines. The comprehensive words "from whatever source derived," if taken in their natural sense, would include not only incomes from real and personal property, but also incomes derived from state and municipal securities.—Gov. Hughes of New York.

Congress could, therefore, tax incomes from state and municipal bonds, and could exempt incomes so derived. Senators and congressmen being necessarily residents of the states and generally of the municipalities would not pass a law which would destroy through taxation the credit of their own state and their own municipality.—Gov. Gilchrist of Florida.

The objection urged by Governor Hughes does not impress me as being a very substantial or effective one. If it is advisable upon broad grounds of public policy for the national government to subject incomes to taxation, it impresses me as a narrow or technical objection to oppose this amendment for the reason that it does not provide for an exemption of that portion of one's income derived from interest upon state and municipal bonds.—Gov. Hadley of Missouri.

The income tax amendment to the constitution is broad enough to include a tax on incomes derived from the ownership of state and municipal bonds.—Gov. Burke of North Dakota.

The language of the amendment is very broad, and injustice might easily occur unless congress should be careful in the exercise of the authority conferred upon congress by this amendment.—Gov. Haskell of Oklahoma.

Indeed it seems to me that if the words "from whatever source derived" would leave the amendment ambiguous as to its power to tax incomes from official salaries and from bonds of states and municipalities, the amendment ought to be opposed by whoever adheres to the democratic maxim of equality of laws, equality of privileges, and equality of burdens. . . . It is impossible to conceive of any proposition more unfair and more antagonistic to the American idea of equality and the democratic principle of opposition to privilege, than an income tax so levied that it would divide the people of the United States into two classes.—Gov. Dix of New York, in his message to the Speaker urging him to press the amendment.

Here, in short, are six gubernatorial utterances made, some in protest against the amendment, some in its favor, but all to the same effect, that the amendment would vest congress with the power to tax incomes from state and municipal bonds; while I have encountered but a single utterance from a like source which is clearly to the contrary effect. Yet despite these warnings, following these commendations, the amendment was ratified. And in this connection it should be noted that ratification by the pivotal state of New York followed upon the Dix message, not upon the attempted refutation of Governor Hughes.[33]

[33] Of the foregoing quotations, the first five are taken from the *N. Y. Times* and *N. Y. World* of Jan. 7, 1910. The last is from the *Dix Papers* (1911), pp. 533–541. The single hostile utterance referred to was that of Governor Noel of Mississippi, *Times*, Jan. 6. Governor Harmon of Ohio was content to leave the question to congress, whose members would never "pass a law that would cripple or destroy their states," *ibid.* Governor Weeks of Connecticut, who was opposed to the amendment, congratulated Governor Hughes "upon the tone of his message," *Times*, Jan. 8. Governor Vessey of South Dakota

But let us consider the evidence which Justice Van Devanter adduces as to the intention of congress itself in proposing the amendment.[34] He first refers to President Taft's message of June 16, 1909, urging an amendment to the constitution which should confer "the power to levy an income tax without apportionment among the states in proportion to population." This clearly shows that the object which was foremost in the president's mind was to get rid of the rule of apportionment in income taxation; but clearly, too, it throws no light on the question of the proper construction of the very differently worded proposal which was finally adopted. In congress the ball was started rolling by Senator Brown of Nebraska, the day following the message. In its original form his proposal gave congress "power to lay and collect direct taxes on incomes without apportionment"; but when it emerged from the senate finance committee eleven days later, it had assumed the shape of the present amendment. Why the change? It would, perhaps, be difficult to say; but the burden of explaining the change is certainly not on those who contend that it must have had some significance. Nor does the trend of the discussion leading up to the passage of the amendment, in either the senate or the house, strengthen the case for tax exemption. For the most part this dealt with political and historical matter which has no bearing on the present question; but it was interlarded with repeated references to the desirability of clothing the national government with the power to tax incomes effectively, both from the point of view of providing for possible emergencies and also from that of equitable taxation.

The resolution of proposal having been passed by the senate by a vote of 77 to 0, then went to the house, where it was voted by an overwhelming majority on July 28, and thereupon went to the states, with the result that congress now lost all control over it. Notwithstanding this, when nearly six months later Governor Hughes sent his message to the New York assembly criticizing the proposal, Senator Borah introduced a resolution asking the senate committee on the judiciary to report on the soundness of the Governor's views; and meantime proceeded to develop his own theory. In brief, his argument was this: It could not be the purpose of the clause "from whatever source derived" to vest congress with additional powers of taxation, since that power was already plenary. The argument is self-contradictory; for if its power of taxation was really plenary, what additional power of the kind was there with which to vest congress? But as an assertion of fact, the statement is merely preposterous, being "so far from the truth"—to borrow an expression of Mr. Chesterton's—"as to be exactly the opposite to it." How, then, is such an absurd statement in the mouth of a reputable public man to be explained? One explanation is to be found in Mr.

is put down as agreeing with Governor Hughes in the *Literary Digest* of Jan. 15, p. 88. Senator Brown, author of the amendment, declared on the floor of the senate that "Alabama, Ohio, Virginia, New Jersey, and other states have governors who not only favor conferring the power, but favor the proposed amendment, which, if adopted, confers the power." *Congressional Record*, vol. 45, p. 2245. For many of these data I am indebted to Mr. Robert A. Mackay, Proctor Fellow in Politics, Princeton University.

[34] The evidence will be found in the following pages of the *Congressional Record:* vol. 44, pp. 1568–1570, 3344–3345 (President Taft's message), 3377, 3900, 4067, 4105–4121, 4389–4441; vol. 45, pp. 1694–1699 (Mr. Borah's speech), 2245–2247 (Senator Brown's views), 2539–2540 (Senator Root's letter to Mr. Davenport of the New York Senate).

Borah's quotation of a number of judicial dicta also asserting the plenitude of congress's power in respect of taxation. It does not seem to have occurred to him to notice that these dicta take their rise from a period long antecedent to *Collector* v. *Day* and *Pollock* v *The Farmers' Loan and Trust Company*, the decisions in which they thus directly impugn.[35] Nor is his invocation of certain principles of "constitutional construction" pertinent unless he means to imply that these are beyond the reach of constitutional amendment, since unlike the original grant of power to congress "to lay and collect taxes," the sixteenth amendment does not employ general terms, but words which are most nicely adjusted to the legal problem to be met,—a point which will become clear in a moment.

First and last, of the more than four hundred members of congress who voted to propose the sixteenth amendment, I have had brought to my notice utterances of just eight dealing with Governor Hughes's message. Senators Borah, Bailey, and Root dissented from the message, principally on the argument just examined. Senator Brown of Nebraska, the reputed author of the amendment, "agreed" with Mr. Borah, but was "willing to assume the contrary." Pointing out that no proposals had come to congress from any state calling for a modified proposal in consequence of Governor Hughes's message, he said: "It does not follow that the amendment should be rejected; on the contrary, it follows that it should be ratified. Because under that interpretation all the incomes would be treated alike." That "the man whose income arises from investments in state and municipal bonds should be exempt from the income tax," he continued, was "on the face of it" a proposition which did not commend itself. "It does not square with the doctrine of equal rights. It is hateful to every sense of justice. It cannot be defended in principle, nor can it be used successfully, in my judgment, to defeat the amendment." In short, Governor Hughes's view ought to be the correct one, whether it was or not, and was calculated furthermore to promote the ratification of the amendment. The house members referred to are on record only in press interviews. They are Mr. Payne of New York, who, as chairman of the ways and means committee, introduced the amendment into the house; Mr. Underwood of Alabama, leading Democratic member of the same committee, Mr. Walter Smith of Iowa, and Mr. Sherley of Kentucky. All of them were inclined to think Mr. Hughes's interpretation the correct one, and that it was probably a good thing that such was the case. Does Justice Van Devanter really think that this evidence supports his conclusions as to the interpretation of the sixteenth amendment?[36]

V

However, the question is not one of fact alone, but of mixed law and fact, so to say. Thus, it is a maxim which has been frequently applied by the court, that the constitution does not contain

[35] The original source of the doctrine of the plenitude of congress's power of taxation is *Hylton* v. *U. S.*, 3 Dall. 171 (1796). See also *Pac. Ins. Co.* v. *Soule*, 7 Wall. 433. The reiteration of the same doctrine in the Pollock Case, which is obviously to be taken in the Pickwickian sense, is to be accounted for by the anxiety of the court to demonstrate that it was not depriving congress of the power of income taxation by its holding that a tax on incomes from property was "direct." See Mr. Hubbard's telling criticism in his article on "The Sixteenth Amendment," in the *Harvard Law Review*, vol. 33, pp. 794–812.

[36] The *N. Y. World*, Jan. 7, 1910.

useless language.[37] But unless the phrase "from whatever source derived" has the operation which Mr. Hughes claimed for it, what operation does it have? Mr. Root sought to meet this difficulty by urging that the phrase in question was "introduced" in order to make it clear that incomes from property as well as those from personal service were meant to be covered by the amendment. The answer is obvious: the decision in the Pollock Case admits congress's right to tax the latter kind of incomes without apportionment; so Mr. Root's contention boils down to the proposition that notwithstanding its historical relation to the Pollock Case the amendment might have had no effect at all—might have been a work of supererogation—had not the phrase "from whatever source derived" been written into it!

A second suggested purpose of the clause may be disposed of just as summarily. This is to be found in Chief Justice White's opinion in the Brushaber Case and consists in the theory that it was the purpose of the amendment to classify all taxes on incomes as "indirect" by forbidding consideration of the source from which the incomes are derived. Unquestionably the amendment does forbid the consideration of the source of incomes in connection with their taxation; indeed, as we shall note in a moment, this is a fact of first importance in determining the amendment's true operation. But the notion that the amendment classifies all income taxes as "indirect" in the constitutional sense must to-day, in the light of what was said in *Eisner* v. *Macomber*, be abandoned; for it is there clearly implied that taxes on incomes derived from property are still to be considered as "direct," although the necessity for their apportionment is now at an end.[38]

The single application of the phrase that remains is, then, its literal application—the sixteenth amendment says that congress may tax incomes "from whatever source derived," and it means it! The phrase, moreover, was admirably chosen to strike at the very roots of the entire theory of tax exemption, which is that *because of their source* certain incomes ought to be considered not as private property but as instrumentalities of government. Henceforward such theories are to be discarded, and congress's power of income taxation is to be defined without regard to the source from which incomes are drawn. In this sense, indeed, the amendment does not *extend* congress's power of income taxation; it restores it to its original dimensions, and not by direct regrant but by levelling to its foundations the whole judicially fabricated structure of tax exemption.

But the case for this reading of the sixteenth amendment is still stronger when it is brought into touch with another acknowledged canon of constitutional interpretation. This is the one wherewith Chief Justice Marshall answered the argument in the Dartmouth College Case[39] that the word "contracts" as used in article I, section 10 of the constitution was not intended to embrace the charters of private eleemosynary institutions: "It is not

[37] See *the Constitution of the U. S. Annotated*, George Gordon Payne, Editor; Gov't Printing Office, 1923; at pages 45–46, and in cases there cited. The rule is directly applied in *Calder* v. *Bull*, 3 Dall. 386; and in a number of cases in which the term "due process of law" of the fifth amendment is compared with the same clause of the fourteenth amendment. See *Davidson* v. *N. O.*, 96 U. S. 97; *Hurtado* v. *Calif.*, 110 U. S. 516; etc.

[38] Chief Justice White offers no proof of his singular theory of the purpose of the clause, and his argument for his position involves the admission that the decision in the Pollock Case was usurpation of power by the court.

[39] 4 Wheat. 518.

enough to say that this particular case was not in the minds of the convention when the article was framed, nor of the American people when it was adopted. It is necessary to go farther and to say that, had this particular case been suggested, the language would have been so varied as to exclude it, or it would have been made a special exception. The case, being within the words of the rule, must be within its literal operation likewise, unless there be something so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument as to justify those who expound the constitution in making it an exception." This maxim has been repeatedly sanctioned by the court, twice in recent cases.[40] Can it be said that there is any such absurdity or repugnancy to the literal rendering of the sixteenth amendment as to exclude it from the rule just stated? It has already been shown on how frail a foundation the doctrine of tax exemption rests especially as applied to income taxation, and also how this doctrine operates to defeat what is universally acknowledged to have been a controlling purpose of the sixteenth amendment, to wit, a more equitable distribution of the burden of taxation.

Yet all this is on the assumption that the intention of those who framed and ratified the sixteenth amendment is a consideration which is material to its interpretation. There is, however, a third maxim of constitutional interpretation which renders this assumption extremely doubtful. The point is that the words "from whatever source derived" are so clear in themselves when not approached with preconceptions drawn from the outside that, in the words of Chief Justice Marshall in a similar case, they "neither require nor admit of elucidation."[41] The court has repeatedly said that "the construction and application of a provision are not restricted by and to the purpose of its adoption";[42] that "it cannot be inferred from extrinsic circumstances that a case for which the words provide shall be exempted from its operation";[43] that—with specific reference to the "commerce" clause—"the reasons which may have caused the framers of the constitution to repose this power . . . in congress do not . . . affect or limit the extent of the power itself."[44] In short, the rule would seem to be that when the literal meaning of a constitutional provision is clear, it is not the speculative intention of the authors of the provision but the text itself which governs; and it is submitted that this rule is applicable in the present instance. No more precise wording could have been chosen to convey the power contended for in this paper, while contrariwise it is in the interest of a *restrictive* application of the words of the amendment *only* that the problem of their interpretation has been created, as it were, out of whole cloth. It is truly a case where the interpretative process is resorted to "not to remove an obscurity, but, to import one."[44a]

[40] *Ozawa* v. *United States*, 260 U. S. 178; *United States* v. *Bhagat Singh Thind*, decided Feb. 19, last.

[41] *Wayman* v. *Southard*, 10 Wheat. 1.

[42] *Constitution of the United States Annotated.* (See note 37, *supra*), p. 42, and cases there cited.

[43] *Op. cit.* p. 45, and cases there cited.

[44] *Addystone Pipe and Steel Co.* v. *United States*, 175 U. S. 211. *See* also *Gibbons* v. *Ogden*, 9 Wheat. 1, and *Chisholm* v. *Georgia*, 2 Dall. 419.

[44a] Justice Sutherland, in *Russell Motor Car Co.* v. *U. S.*, decided April 9 last. The opinion cites several cases forbidding resort by a court to legislative debates for extrinsic aid in interpreting a statute: *Lapina* v. *Williams*, 232 U. S. 78, 90; *Omaha & C. B. Street R. Co.* v. *I. C. Com's'n*, 230 U. S., 324, 333; *Standard Oil Co.* v. *U. S.*, 221 U. S. 1, 50; *United States* v. *Trans-Mo. Frt. Asso.*, 166 U. S. 290, 318. The objections to invoking

VI

We now return to the second point raised above with respect to the decision in *Evans* v. *Gore*,[45] namely, whether it involves the broader question of the status, in relation to the sixteenth amendment, of incomes from state and municipal bonds and the salaries of state officials. The point of view, however, from which this query is put should be made clear. There is no anxiety to preserve the decision in *Evans* v. *Gore*, which fully as much as *Collector* v. *Day*[46] illustrates what curious results the judicial mind can sometimes achieve when it chooses to let itself go. The proposition for which *Evans* v. *Gore* stands is that a certain category of national judges should not be required to pay on their salaries the same taxes to the national government as other people would on a like income, although they receive the same protection from the government; that while as to ordinary incomes a payment of taxes is a use thereof, as to certain judicial salaries it is a forced surrender, a confiscation. But if to collect a general income tax on the salary of a judge in office when the tax was enacted is to diminish such salary in the sense forbidden by article III, then to repeal, or even to reduce, an income tax reaching the salary of a president in office would be to increase such salary contrary to article II, and furthermore, to repeal or to reduce the tax as to any part of the income of the president in such a case would be another "emolument from the United States," also forbidden by article II. In other words, as to everybody else in the country an income tax can be repealed or reduced at any time, but as to a president taking office under the act it must be collected to the end of his term, and not only on his salary but on all his income, and at the same rate! Furthermore, in failing to note any distinction between a discriminatory and non-discriminatory taxation of judicial salaries, the decision actually exposes the salaries of future judicial incumbents to special exactions. For while the "judicial independence" of judges in office at any particular time is bulwarked behind this decision, that of judges-to-be is still left to the mercy of congress and their own fortitude.

But while this decision, for the reasons stated, can hardly claim our applause, it is, nevertheless, until it is set aside by the court, a fact to be reckoned with, and so the question of its scope becomes one of importance. The precise inquiry is, therefore, whether the question decided in *Evans* v. *Gore* can be distinguished logically from the question which would be raised by the application of a national

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a supposed "intention" of the legislator as interpretative of the law are admirably stated by Malberg, *Contributions à la Theorie Générale de l'Etat* (1920), I, sec. 237. "In order that the will of the legislator become law, it must take form in an official text adopted in solemn form. . . . That procedure which consists in imputing intentions to the legislator by taking account of the state of mind, the customs, the circumstances which prevailed at the period of the making of the law can furnish interpretation only very vague data. . . . The text alone has the authoritative validity of the law," *ibid.* The objections against resort to extrinsic aids are, of course, vastly multiplied in the case of an amendment to the constitution of the United States, which becomes law only after proposal by two thirds of each house of congress and the favorable vote of three fourths of the state legislatures. To rely upon the views of not more than four men, as Justice Van Devanter does, as expressive of the "intentions" of this far-flung legislative organ would of itself be ridiculous, even if their utterances were not more than offset by contrary evidence, which, however, is clearly the case.

[45] See note 24, *supra*.

[46] Cited in note 13, *supra*.

income tax to incomes from state and municipal bonds and to state official salaries? I submit that it can be, for two reasons: In the first place, while the decision in *Evans* v. *Gore* is based on a clause of the written constitution, no such clause can be invoked in behalf of the incomes just mentioned. Be it noted that the court does not claim that national judicial salaries are inherently exempt from national taxation; and indeed, as we have seen, such salaries are subject to an income tax if the tax is in existence when the incumbent takes office. Thus, notwithstanding the importance of the principle of the separation of powers in our system, as well as of the principle of judicial independence, yet neither of these principles, nor both together, were regarded by the framers of the constitution as sufficient to secure the exemption enforced in *Evans* v. *Gore*, but that exemption had on the contrary to be stipulated for in the written instrument itself. The exemption of incomes from state and municipal bonds and of state official salaries from national income taxation is, on the other hand, merely a deduction, and a far-fetched one at that, from theories external to the constitution. The question is surely prompted, why, if implication was insufficient in the one case, should it be supposed to suffice in the other?

The second difference between the case decided and the one suggested is even more cogent, though less obvious. It can be put in this way: That whereas the exemption which judicial salaries receive from the constitution has no reference to the *source* of the salary but, on the contrary, is extended to the *recipient* thereof, the exemption which is claimed for incomes from state and municipal bonds—and I should say the same thing of state official salaries—is claimed solely on a consideration of the *source* of such incomes and totally without regard to the deserts or necessities of the *recipients*. Or to put it slightly differently, whereas certain judicial salaries are protected *as such* by article III of the constitution, income derived from state and municipal bonds is sought to be protected *despite its being income* by considering its source. But if the contention of the present writer be accepted, as it must be at this point at least for the purpose of argument, consideration of source is precisely what the sixteenth amendment forbids in the determination of the scope of congress's power in taxing incomes. So, conceding the point decided in *Evans* v. *Gore* to have been correctly decided, namely, that the tax there involved was a diminution of judicial salaries in the sense of article III, the sixteenth amendment had absolutely no bearing on the case; not, however, because the amendment does not purport to enlarge congress's power of taxing income, but *because the criterion which had previously restricted this power and which is now repealed by the amendment, does not appear in article III*. It follows of necessity that what was said in *Evans* v. *Gore* about the sixteenth amendment was pure *obiter dictum* and without any legal weight whatsoever.

To summarize: (1) Congress has the power to permit state taxation of national securities by non-discriminatory taxes. (2) On correct theory, it has always had the power to tax incomes from state and municipal securities by a general income tax. (3) The sixteenth amendment restores that power by striking down the judicial theory whereby such incomes came to be exempted. Congress may tax incomes from whatever source derived. The words of the amendment are perfectly explicit and the sense of them could

not be made clearer by a dozen constitutional amendments. What is needed, therefore, is not further tinkering with the constitution but an act of congress assertive of its present powers. Nor is there any judicial decision interpretative of the sixteenth amendment which stands in the way of such an assertion of power. Yet even if it were otherwise, that should not deter congress from taking the proper steps to secure a reconsideration of so important a question. In the words of the historian of the constitution: "It is the constitution which is the law, and not even the past decisions of the court upon it. . . . To the decision of an underlying question of constitutional law no . . . finality attaches. To endure it must be right."[47]

It only remains to indicate briefly the form that congress's action should take. This action would be based on the fundamental premise that public securities in the hands of private persons are private property and that the income from such securities is private income. On the one hand, therefore, congress should subject all future issues of national securities, as well as the incomes therefrom, to the unimpeded operation of the general, nondiscriminatory tax laws of the states, and, on the other hand, claim a like operation for the national income tax upon the incomes from all future state and municipal issues. That is to say, the act should be reciprocal as between the national government and the states, and it should respect existing vested rights and moral obligations. To be sure, it may be argued that expectations growing out of an attempt to evade taxation are not entitled to much respect, yet the answer is plain: the evasion was one which the law itself, allowed and indeed promoted; wherefore it would be most imprudent to ask the court to disappoint such expectations. And anyway there is no need to cry over spilt milk if only we can make sure that no more milk will be spilt.[48]

[47] Bancroft, *Works*, IV, 549, as quoted by F. J. Stimson, the *American Constitution*, etc., p. 29. See also to the same effect Bancroft's *History* (Author's last revision), VI, 350. See further to the same effect George Ticknor Curtis, *Constitutional History of the United States* (N. Y., 1897), II, 69–70; also, Chief Justice Taney's words in *The Genessee Chief*, 12 Hon. 443, overruling *The Thomas Jefferson*, 10 Wheat. 448: "We are convinced that if we follow it we follow an erroneous decision, and the great importance of the question could not have been foreseen."

[48] An additional difficulty in the way of maintaining *Collector* v. *Day* today should have been noticed under section II *supra*. *Green* v. *Frazier*, 253 U. S. 233, makes it clear that states may today borrow money to an almost unlimited extent for purposes which were non-governmental in 1789. Yet by *South Carolina* v. *U. S.*, 199 U. S. 437, *a state is not entitled to claim exemption from national taxation in the discharge of such functions*. On this ground alone the right of holders of state and municipal bonds to be exempt as to such holdings from the national income tax becomes most questionable in many cases. And generally speaking, it seems clear that the court cannot profess to uphold both *Collector* v. *Day* and *South Carolina* v. *U. S.* indefinitely.

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Edited by ROBERT T. CRANE

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